TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 59.

ONTARIO LAND COMPANY, PLAINTIFF IN ERROR,

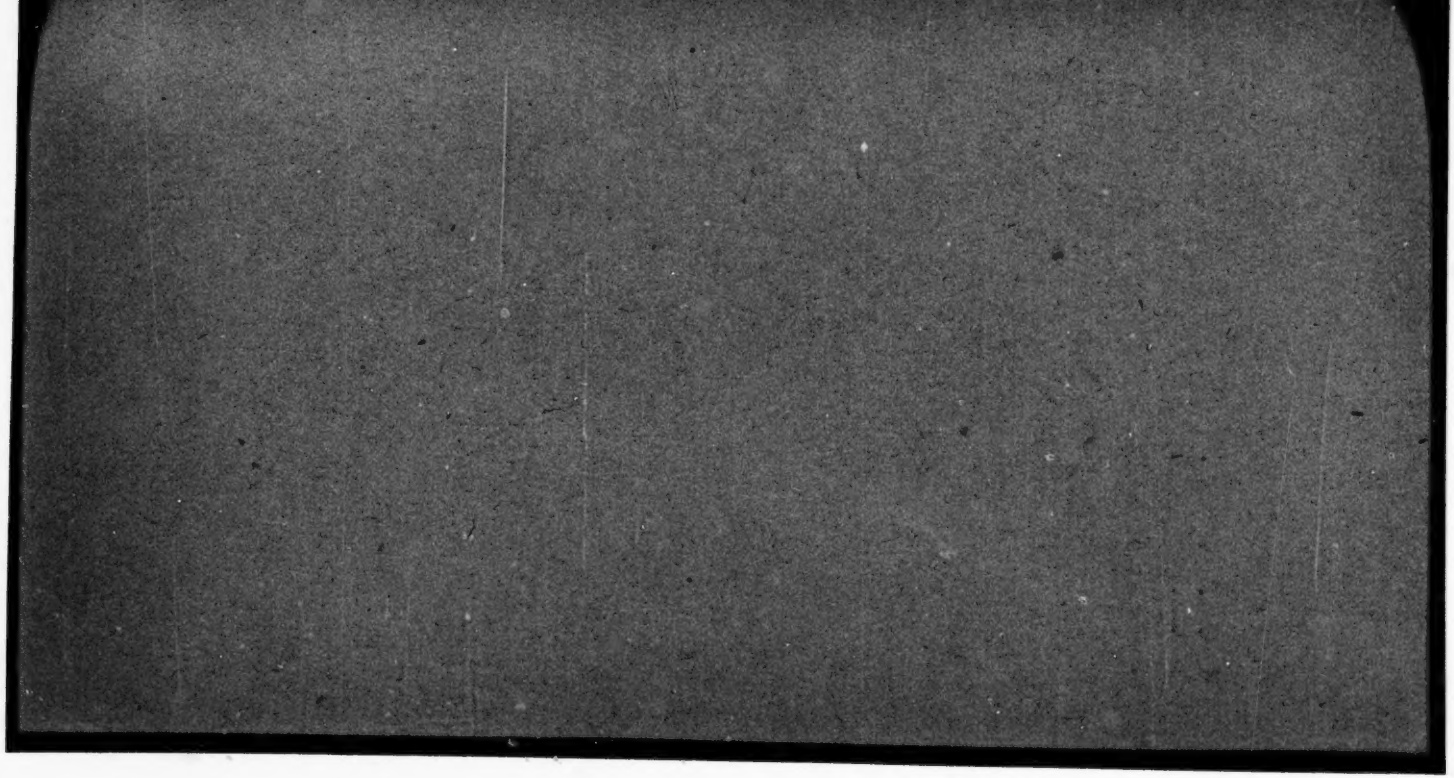
vs.

JAY YORDY AND MINNIE E. YORDY, HIS WIFE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED APRIL 11, 1907.

(20,663.)



(20,663.)

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OCTOBER TERM, 1907.

No. 277.

ONTARIO LAND COMPANY, PLAINTIFF IN ERROR,

vs.

JAY YORDY AND MINNIE E. YORDY, HIS WIFE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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Filed May 4, 1906.

C. S. REINHART, *Clerk.*

1 In the Superior Court of the State of Washington for Yakima County.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, His Wife, Defendants.

Summons.

The State of Washington to the said J. E. Yordy and Minnie E. Yordy, said defendants:

You are hereby summoned to appear, within twenty (20) days after the service of this summons upon you, exclusive of the day of service, and defend the above entitled action in the Superior Court of the State of Washington for Yakima County aforesaid; and answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff, at their office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the Complaint, which will be filed with the clerk of said court (and a copy of which is herewith served upon you).

WHITSON & PARKER AND
SNYDER & PREBLE,
Attorneys for Plaintiff.

P. O. Address: North Yakima, County of Yakima, Washington.

Endorsed: Filed the 17th day of March, A. D. 1905. J. W. Day, Clerk. By Edw. E. Cleaver, Deputy.

2 In the Superior Court of the State of Washington for Yakima County.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, Defendants.

Complaint.

Comes now the above named plaintiff and for complaint herein, alleges the following facts:

1.

Said plaintiff, The Ontario Land Company, now is, and ever since a time prior to May twenty-fourth, 1890, was a corporation duly

created, organized and existing under and in virtue of the laws of the state of Minnesota; That plaintiff has complied with the laws of the State of Washington in respect to foreign corporations, and by the laws of the State of Washington duly is authorized to do business, and to receive the conveyance of land in the state last aforesaid.

2.

That on May twenty-fourth, 1890, the said plaintiff was, and ever since said date has been, and now is the owner of the land in this paragraph hereinafter described, and lawfully seized of an indefeasable estate in fee simple therein, and entitled to the possession, thereof, to-wit:

Lots nine, ten, eleven, twelve, thirteen and fourteen in Block One of Heerman's Addition to North Yakima in Yakima County in the State of Washington, according to the official plat and survey thereof, now of record in the office of the county Auditor for said Yakima County.

3

3.

That the said plaintiff deraigns its title and right to the possession of said land as aforesaid, as follows, to-wit:

That on and prior to January the eighteenth, 1887, the United States of America, being then the owner of said land, to-wit: the said land being then public, unappropriated land, belonging to the said United States, by letters patent, bearing date January eighteenth, 1887, patented and conveyed the said lands, to one Charles M. Holton, which said patent was duly recorded in the office of the Registrar of deeds of Yakima County, on December twenty-eighth, 1887, and recorded in book "A" of "Patents," on page nine, said patent conveying to said Holton, the east half of the Southwest quarter and the west half of the Southeast quarter of section twenty four in township thirteen, north of range eighteen, east of the Willamette Meridian, which said land, described in said patent embraces the land described in Paragraph two of this complaint; That on February sixteenth, 1889, the said Charles M. Holton and his wife —— Holton, being then the owners and in possession of said land described in paragraph two, under and in virtue of said patent, by their warranty deed, conveyed the same, together with other lands, in fee simple, to one Chester A. Congdon, which said deed was recorded March twenty-sixth, 1889, in Book "1" of the records of deeds of said Yakima County, on page "222," the land conveyed in the deed last aforesaid, being therein described as follows:

West half of southeast quarter and east half of South west quarter of Section Twenty-four in Township thirteen North, Range Eighteen, East of Willamette Meridian, excepting ten acres in the South east quarter of the South west quarter, occupied by

4 Holton's home place, embracing the lands described in Paragraph Two of this complaint.

That on May twenty-fourth, 1890, said Chester A. Congdon and his wife, Clara B. Congdon, being then in virtue of the deed last

aforesaid, the owners of, and in possession of the land described in Paragraph Two hereof, by their quit-claim deed, conveyed the said lands, together with other lands, to the Ontario Land Company, the plaintiff above named, which said deed was recorded June the fourth, 1890, in Book "L" of "deeds" of Yakima County Records, Page "516"; the lands conveyed by, and described in the deed last aforesaid, to-wit: West half of South east quarter and east half of south west quarter of Section Twenty-four, Township Thirteen North, Range Eighteen East of Williamette Meridian, Excepting Holton's Ten acres, embraced the lands described in paragraph Two of this complaint; and that the said Ontario Land Company, in virtue of the deed and conveyance last aforesaid, ever since the execution of said deed, has been, and now is the owner in fee, of the said lands as hereinbefore set forth, and entitled to the possession thereof.

4.

That on or about March the 1st, 1905, said plaintiff, being the owner, and seized of said lands, and entitled to the possession thereof, as aforesaid, the said defendant, J. E. Yordy, wrongfully and unlawfully entered into, and possessed the said lands, and ever since the date last aforesaid, has wrongfully held the possession thereof, and ever since said date has, and now does unlawfully and unjustly withhold the possession of said lands from the plaintiff, to the plaintiff's damage in the sum of Fifty Dollars.

5

5.

That said defendants, J. E. Yordy and Minnie E. Yordy, are husband and wife, and were such at the time of said entry of said J. E. Yordy into said lands; that the said Minnie E. Yordy, in virtue of said marriage relation, wrongfully and unlawfully claims some estate or interest in and to said land, adversely to the plaintiff, and that said defendants claim, and each of them claim, wrongfully and unlawfully and adversely to plaintiff, some estate or interest in said land, which claim and claims is and are without foundation in law or equity.

For second cause of action, the plaintiff alleges the following facts:

1.

Said plaintiff, The Ontario Land Company, now is, and ever since a time prior to May twenty-fourth, 1890, was a corporation duly created, organized and existing under and in virtue of the laws of the State of Minnesota, and by the laws of the State of Washington duly authorized to do business, and to receive the conveyances of land in the state last aforesaid, by having complied with laws of said State of Washington, in respect of foreign Corporations.

2.

That on May twenty-fourth, 1890, the said plaintiff was, and ever since said date has been, and now is the owner of the land in this paragraph hereinafter described, and lawfully seized of an indefeasable estate in fee simple therein, and entitled to the possession

thereof, to-wit: Lots nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen in Block Two in Heerman's Addition to North Yakima, according to the official plat thereof, of record in the
6 office of the County Auditor for said Yakima County.

3.

That the said plaintiff deraigns his title and the right to the possession of said land as follows, to-wit: That on and prior to January the eighteenth, 1887, the United States of America, being then the owner of said land to-wit: the said land being then public, unappropriated land, belonging to the said United States, by letters patent, bearing date January eighteenth, 1887, patented and conveyed the said land, together with other lands, to one Charles M. Holton, which said patent was duly recorded in the office of the Registrar of Deeds of Yakima County, on December twenty-eighth, 1887, and recorded in Book "A" of "Patents," on page Nine, said patent conveying to said Holton, the east half of the southwest quarter and the west half of the southeast quarter of section twenty-four in township thirteen, north of range eighteen, east of the Willamette Meridian, which said land, described in said patent, embrances the land described in Paragraph Two of this second cause of action; that on February sixteenth, 1889, the said Charles M. Holton and his wife, —— Holton, being then the owners and in possession of said lands described in Paragraph Two, under and in virtue of said patent, by their warranty deed, conveyed the same, together with other lands, in fee simple, to one Chester A. Congdon, which said deed was recorded March twenty-sixth, 1889, in Book "1" of the "records of Deeds" of said Yakima County on Page "222," the land conveyed in the deed last aforesaid, being therein described as follows:

West half of South East quarter and East half of South West quarter of Section Twenty-four in Township Thirteen North, Range Eighteen, East of Willamette Meridian, excepting Ten acres
7 in the southeast quarter of the Southwest quarter, occupied by Holton's home place; said land conveyed by deed last aforesaid embracing the lands described in Paragraph Two of this second cause of action.

That on May Twenty-fourth, 1890, said Chester A. Congdon and his wife, Clara B. Congdon, being then in virtue of the deed, last aforesaid, the owners of, and in possession of the land described in Paragraph Two of this second cause of action, by their quit-claim deed, conveyed the said lands, together with other lands, to the Ontario Land Company, plaintiff above named, which said deed was recorded June the fourth, 1890, in Book "L" of Deeds" of Yakima County records, page "516;" the lands conveyed by, and described in the deed last aforesaid, towit—west half of southwest quarter and east half of south west quarter of section twenty-four, Township Thirteen North, Range Eighteen East of Willamette Meridian, excepting Holton's Ten acres, embraced the lands described in Paragraph Two of this second cause of action, and that the Ontario Land Company, in virtue of the deed and conveyance last aforesaid,

ever since the execution of said deed, has been and now is the owner in fee of the said lands, as hereinbefore set forth, and entitled to the possession thereof.

4.

That on or about March first, 1905, said plaintiff being the owner and seized of the said lands described in paragraph Two of this second cause of action, and entitled to the possession thereof, as aforesaid, the said defendant, J. E. Yordy, wrongfully, and unlawfully entered into, and possessed the said lands, and ever since the date last aforesaid, has wrongfully held the possession thereof, and ever since said date, has, and now does unlawfully and unjustly withhold the possession of said lands from the plaintiff, to
8 the plaintiff's damage in the sum of Fifty Dollars.

5.

That said defendants, J. E. Yordy and Minnie E. Yordy, are husband and wife, and were such at the time of the said entry of said J. E. Yordy into said lands described in Paragraph two of this second cause of action; that the said Minnie E. Yordy, in virtue of said marriage relation, wrongfully and unlawfully claims some estate or interest in and to said land, adversely to plaintiff, and that said defendants claim, and each of them does claim, wrongfully and unlawfully and adversely to plaintiff some estate or interest in said land, which claim and claims is and are without foundation in law or equity.

Wherefore, plaintiff prays the judgment of said Court, restoring it to the possession of said lands described respectively in paragraph Two of said first cause of action and paragraph Two of said second cause of action, and for its damage in the sum of One Hundred Dollars, and that a Writ of Restitution issue to that effect, and quieting plaintiff's title to said lands against defendants, and for its costs and disbursements herein, and for such further relief as may be meet in the premises.

WHITSON & PARKER AND
SNYDER & PREBLE.
Attorneys for Plaintiff.

P. O. Address: North Yakima, Washington.

9 STATE OF WASHINGTON, *County of Yakima, ss:*

Albert S. Congdon, being first duly sworn, says that he resides at North Yakima in the State of Washington; that he is the agent of The Ontario Land Company, the plaintiff named in the foregoing complaint, duly appointed by said Company, by writing, filed by the president, and chief officers of said plaintiff, and attested by its corporate seal, and by said appointment in writing, duly authorized to accept service of process in any action or suit pertaining to the property or business or transactions of the said plaintiff within the state of Washington, and that said appointment is made and filed in the office of the Secretary of State, of said State of Washington,

and is in all respects, in compliance with section Three of the Act of Legislature of the State of Washington, approved on March the twenty-eighth, 1890, entitled "An Act relating to foreign Corporations and to repeal certain laws in conflict therein; that he has read and knows the contents of the foregoing complaint, and that he believes the same to be true.

(Signed) ALBERT S. CONGDON.

Subscribed and sworn to before me this 6th day of March, 1905.

VESTAL SNYDER,

Notary Public, Residing at North Yakima, Washington.

Endorsed: Filed the 17th day of March, A. D. 1905. J. W. Day, Clerk. By Edw. E. Cleaver, Deputy.

10 In the Superior Court of the State of Washington in and for the County of Yakima.

ONTARIO LAND COMPANY, a Corporation, Plaintiff,

vs.

J. E. YORDY and MINNIE E. YORDY, Defendants.

1st Amended Answer.

Come now the defendants in the above entitled action, and for answer to plaintiff's first cause of action in said complaint contained admit, deny and allege:

I.

Admit each and every allegation in paragraph 1 in said complaint contained.

II.

Deny each and every allegation of paragraph 2 in said complaint contained, except that said plaintiff, prior to the second day of May, 1903, claimed to own block numbered 352 of Capitol Addition to North Yakima, as in this answer set forth and alleged.

III.

Deny that these defendants, or either of them have any information or knowledge as to any of the matters and things stated or alleged in paragraph 3 in said complaint contained, sufficient to form a belief, and therefore deny the same.

IV.

Deny each and every allegation in paragraph 4 in said complaint contained.

11 V.

Deny each and every allegation of paragraph 5 in said complaint contained, except that the defendants, J. E. Yordy and Minnie E. Yordy were and are husband and wife, and except that said defendants claim title to said tract of land adversely to said plaintiff.

For answer to plaintiff's second cause of action, the defendants admit, deny and allege:

I.

Admit each and every allegation in paragraph 1 in said second cause of action in said complaint contained.

II.

Deny each and every allegation in paragraph 2 in said second cause of action in said complaint contained, except that prior to May 1903, the plaintiff claimed to be the owner of Block 372 of Capitol Addition to North Yakima, as in this answer alleged and set forth.

III.

Deny that said defendants or either of them have any information or knowledge as to the matters set forth alleged and stated in paragraph 3 of said second cause of action in plaintiff's complaint contained sufficient to form a belief, and therefore deny the same.

V.

Deny each and every allegation in paragraph 4 of said second cause of action in said complaint contained.

VI.

Deny each and every allegation of paragraph 5 of said second cause of action in said complaint contained, except that said
12 J. E. Yordy and Minnie E. Yordy were and are husband and wife, and claim title to said land adversely to plaintiff.

For a first and affirmative defense to said first and second causes of action these defendants allege:

I.

That on the 2nd day of May, 1903, and for a number of years prior thereto, the plaintiff, the Ontario Land Company, claimed to be the owner of that certain tract of land referred to by it in its complaint as Blocks 1 and 2 of the alleged addition to North Yakima, designated by said plaintiff in its complaint as Heerman's Addition to North Yakima, and which lots were known and designated on the tax list and tax records of Yakima County, Washington, as Blocks 352 and 372 of Capitol Addition to North Yakima, Yakima County, Washington; that said blocks are in the east half of the southwest quarter, and the west half of the southeast quarter of section 24, township 13 north, range 18 E. W. M. That said blocks are laid off and marked with natural boundary lines such as streets and alleys; that they have been during all of the times herein mentioned assessed as such blocks and are the identical blocks and tracts of land mentioned in said plaintiff's complaint, and therein attempted to be designated as blocks 1 and 2 of said Heerman's addition; that said blocks described as aforesaid were during all of the times herein mentioned subject to taxation under the laws of the

state of Washington, and were taxed for state, county and municipal purposes as by the laws of the state of Washington made and provided for several years prior to the 2nd day of May, 1903;
13 that no persons paid the taxes on said blocks, and on the 3rd day of January, 1902, there being a large amount of taxes unpaid and delinquent on said blocks the county of Yakima, state of Washington, as plaintiff duly filed in the office of the clerk of Yakima county, Washington, and *ex-officio* clerk of this court its summons notice and petition to foreclose the said taxes and tax liens on said property, which said action is numbered 64 on the records in the office of said county clerk, and is entitled "Yakima county, state of Washington, Plaintiff, *vs.* Edward Whitson, *et al.*, Defendants," and duly published said summons and notice as by law made and provided. That thereafter application was duly made to said superior court for a judgment, decree and order of sale in said cause, and said superior court thereupon duly entered a judgment and decree adjudging and decreeing that the blocks and tracts of land hereinbefore described, were subject to taxation, and that certain taxes against said tracts of land were delinquent for certain prior years and duly entered a judgment and decree foreclosing said tax lien, and made an order directing that said property be sold for said unpaid taxes, which said judgment and decree was filed for record in the office of the Clerk of the above Court and said County Clerk on the 2nd day of September, 1902, and is recorded in Vol. 1 of Tax Journal, at page 520 of the records in the clerk's office of Yakima county, Washington. That thereafter and pursuant to said judgment and decree the Treasurer of Yakima county, Washington, gave notice of sale, and on the 2nd day of May, 1903, the above described tract and blocks of land were sold for said unpaid taxes pursuant to said judgment, decree and order of sale; that
14 said sale was conducted through its duly qualified officer, E. G. Peck, the then county treasurer of said county, and at said sale the defendant, herein, J. E. Yordy, purchased the tract and blocks of land hereinbefore mentioned, and said E. G. Peck, County Treasurer of said county at said time, made, executed and delivered a certain tax deed conveying said block or tract of land to said defendant, a copy of which said tax deed, together with the endorsements thereon, is hereto annexed marked "Exhibit A," and made a part of this answer; that said E. G. Peck was the duly qualified and acting county treasurer of Yakima county, Washington, at the time he made, executed and delivered said deed. That all proceedings in the matter of foreclosing said tax and selling said property for said delinquent and unpaid taxes, and in issuing said tax deed were had in said cause as by the laws of the state of Washington made and provided, and said tax deed conveyed a full legal title to all of said property so described, to said defendant, J. E. Yordy.

II.

That immediately after said deed was executed and delivered to the defendant herein, he filed the same in the office of the County Auditor of Yakima county, Washington, as is more fully shown by

the endorsements on said deed; that after receiving said tax deed said defendant went into possession of said property and has ever since had, and now is in possession of said property, and claims to be the owner of the same under said tax deed; that he is the owner of said property, and the plaintiff has no interest therein.

For a further and second affirmative defense to said first and second causes of action the defendants herein allege:

15 I.

That said plaintiff has not paid any taxes on said property herein described, or any part thereof, for many years last past; that said plaintiff was notified by the proper officers of Yakima County, Washington that said property had been assessed as herein alleged, and had knowledge that said property had been so assessed, and said plaintiff failed and refused to pay said taxes when they became due, and permitted them to become delinquent; that said plaintiff had full knowledge that the County of Yakima, state of Washington, had commenced an action in the Superior Court of the state of Washington in the county of Yakima, to foreclose the tax lien in this answer referred to on said tracts of land, and that the state, county and municipal taxes were delinquent thereon; that said plaintiff had full knowledge and notice that a decree was about to be entered, foreclosing the tax lien hereinabove referred to on said lands, and with full notice of the delinquency of taxes on said lands, and that they had been assessed as in this answer stated, and that the county of Yakima was proceeding to foreclose said tax lien, stood by and permitted the lands to be so assessed and taxed, and permitted the said decree of foreclosure to be entered in said cause for said unpaid taxes, and permitted an order of sale of said property to be made with full knowledge of all the facts relating thereto, and never at any time, or at all, made any objection, or protested against said proceeding. That after said judgment and decree of foreclosure was entered, said treasurer of Yakima County, gave notice that he would sell said premises for said taxes; that said plaintiff, with full knowledge that said property had been assessed; that aforesaid judg-
16 ment and decree had been entered, stood by and permitted said property to be sold under said decree of foreclosure, and notice of sale, and with full knowledge of all the facts, and that the said sale was about to take place, stood by and permitted the county of Yakima to sell said property to J. E. Yordy, the defendant herein, and issue a deed to him, as herein referred to and set forth, without making any objection or filing any protest; that all proceedings taken in said tax foreclosure matter were fully known to said plaintiff, and that it never at any time, or at all, made any objection whatsoever, or entered any protest, but stood by knowing all of said facts, and permitted said property to be sold. That said plaintiff is by reason of its gross negligence in not making any objections to any of said proceedings, guilty of laches, and is not entitled to any relief in law or in equity; that said plaintiff is by reason of standing by and permitting said property to be sold for

said taxes, with knowledge of all said proceedings, and by reason of his said acts estopped from claiming any interest therein against these defendants, or either of them.

For a third and further affirmative defense, these defendants allege:

I.

That the plaintiff herein, its predecessors or grantors have not been seized or possessed of the premises in question within ten years before the commencement of this action.

Wherefore defendants pray that said action be dismissed;
17 that they have their costs and disbursements herein incurred.

IRA P. ENGLEHART,
Attorney for Defendants.

STATE OF WASHINGTON, *County of Yakima, ss:*

Ira P. Englehart being first duly sworn on oath says: I am attorney for the defendants in the above entitled action and I make this verification for and on behalf of said defendants for the reason that said defendants are not now in said County of Yakima to make the same; that I have read the foregoing answer and know the contents thereof; that the same is true as I verily believe.

IRA P. ENGLEHART.

Subscribed and sworn to before me this 7th day of April, 1905.

C. H. HINMAN,
Notary Public for the State of Washington,
[SEAL.] *Residing at North Yakima, Washington.*

18 EXHIBIT A.

STATE OF WASHINGTON, *County of Yakima, ss:*

This indenture made this 2nd day of May, A. D. 1903 between E. G. Peck, as Treasurer of Yakima County, State of Washington, party of the first part, and Jay Yordy, party of the second part:

Witnesseth, That, whereas, at a public sale of real estate held on the 2nd day of May, A. D. 1903, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2nd day of September, A. D. 1902 in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, Jay Yordy duly purchased in compliance with the laws of the State of Washington, the following described real estate, to-wit:

All of Blocks Numbered Three Hundred Fifty-two (352) and three hundred seventy-two (372) of Capitol Addition to North Yakima, Washington, and that said Jay Yordy has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Know therefore, Know ye, that I, E. G. Peck, County Treasurer of said Yakima County, State of Washington, in consideration of

the premises and by virtue of the statutes of the State of Washington, in such cases provided, do hereby grant and convey unto Jay Yordy heirs and assigns, forever the said real estate hereinbefore described.

Given under my hand and seal of office this 2nd day of May, A. D. 1903.

[SEAL.] E. G. PECK,
County Treasurer.

19 Endorsed on back as follows:

"Filed for Record at the request of Jay Yordy May 2, A. D. 1903, at 30 min. past 9 a. m., and recorded in Vol. 7 of Deeds, page 42, Records of Yakima County, Washington. (Seal.) W. B. Newcomb, County Auditor.

Endorsements: "In the Superior Court of Yakima County, State of Washington. Ontario Land Company, plaintiff, *vs.* J. E. Yordy, *et ux.*, defendant. First amended answer. Filed May 3rd, 1905, by J. W. Day, County Clerk. Edwd. E. Cleaver, Deputy. Due and Legal Service of the within is hereby admitted this 14th day of April, 1905. E. B. Preble, Ira P. Englehart, Attorneys for Defendant, North Yakima, Wash.

20 In the Superior Court of the State of Washington for Yakima County.

ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, Defendants.

Reply to First Amended Answer.

Comes now the above named plaintiff, and for its reply to the first amended answer of defendants herein, to-wit: To all of said answer, excepting the second and third affirmative defenses therein set forth, to which a demurrer has been sustained, shows the Court as follows:—

1.

Said plaintiff denies each and every allegation, matter and thing, and each and every part thereof set forth in the first, further and affirmative defense in said first amended answer contained.

2.

Plaintiff denies that Blocks One and Two of Heerman's Addition to North Yakima, referred to in plaintiff's complaint herein, were known or designated as Blocks Three Hundred and Fifty-two and Three Hundred and Seventy-two of Capitol Addition to North Yakima, Yakima County, Washington, on the tax list or any tax records of Yakima County, Washington, or elsewhere or at all, or that the tract of land referred to in plaintiff's complaint, were ever known or designated on the tax list or tax records of Yakima

County, or elsewhere or at all, as blocks Three Hundred and Fifty-two and Three Hundred and Seventy-two of Capitol Addition to North Yakima, Yakima County, Washington, or that either of
21 the said Lots One or Two of said Heerman's Addition to North Yakima, was ever known or designated as Block Three Hundred and Fifty-Two or Three Hundred and Seventy-two of Capitol Addition to North Yakima, Yakima County, Washington, on the tax list or tax records of Yakima County, Washington, or elsewhere or at all.

3.

Said plaintiff denies that said Blocks One and Two of Heerman's Addition or either thereof, or the land or any part thereof covered thereby, are, or ever were laid off or marked with natural or other boundary lines, such as streets, or alleys, or otherwise, except that, on the twenty-seventh day of September, 1904, a paper map or plat of said land, called Heerman's Addition to the City of North Yakima, was caused to be made by said plaintiff, showing on said plat, streets and alleys passing over said land; and plaintiff denies that the tracts of land referred to in said complaint, or either, or any part thereof, have been, during all the times in the said first amended answer mentioned, or at all, assessed as such blocks, or assessed at all; and plaintiff denies that, in Capitol Addition to North Yakima, there is any block Three Hundred and Fifty-two or any Block Three Hundred and Seventy-two, or that any block, or blocks were, at any time set forth in said answer or at all, subject to taxation under the laws of the state of Washington, or were taxed for state, county or municipal or any purposes, for several years prior to the second day of May, 1903, or for any year or time whatsoever.

4.

Plaintiff denies that, on the third day of January, 1902,
22 or at all, there were any taxes whatsoever unpaid or delinquent on said blocks or either thereof, or on the land or any thereof, referred to in the plaintiff's complaint herein, or that on said date or at all, the County of Yakima in the state of Washington, filed in the office of the Clerk of Yakima County, its summons or notice to foreclose any tax or other lien of said County of Yakima, on said property, or any part thereof, or that said summons or notice or petition were duly published, or published at all as the law provided, or otherwise.

5.

Plaintiff denies that said Superior Court entered a judgment or decree, adjudging or decreeing that the blocks and tracts of land described in said first amended answer or in the complaint herein, or any thereof, or any part thereof, were subject to taxation, or adjudging or decreeing that certain taxes, or any taxes, against said tracts of land, or any part thereof, were delinquent for certain, or any years, or that said court entered a judgment or decree, foreclosing said taxes on the lien, or made an order, directing that said property, or any thereof, be sold for said or any taxes, or that said

judgment was filed for record in the office of the Clerk of the above Court, or of the County Clerk, on the Second of September, 1902, or at all, or that the same is recorded in Volume One of "Tax Journal," at page "520," of the records in the Clerk's office of Yakima County, or recorded in any volume or on any page or elsewhere in the records of said Clerk's office.

6.

23 Plaintiff denies that thereafter, or at all, pursuant to said judgment or decree or otherwise, the Treasurer of Yakima County gave notice of sale or that, on the second day of May 1903, or at any time, the above described tracts and blocks of land, or either or any part thereof, or the land described in plaintiff's complaint, or in defendant's answer or any part thereof, was sold for unpaid or other taxes, pursuant to said judgment or decree, or order of sale or at all, or that said sale was conducted through its duly qualified officer, E. G. Peck, the then County Treasurer of said County, or at all, or that, at said sale, or at all, the defendant aforesaid, J. E. Yordy, purchased the tracts and blocks of land or any part thereof, in said answer or in plaintiff's complaint mentioned, or that said E. G. Peck, County Treasurer, or any one else, at said time or at all, made or executed or delivered its deed, conveying the said blocks or tracts of land, referred to in said answer or in plaintiff's complaint, or either or any part thereof, to said defendant or any other person, or that said Exhibit "A" attached to said answer, is a copy of said, or of any tax, or other deed.

7.

Plaintiff denies that the said J. E. Yordy ever went into, or ever was in possession of the said property, referred to in plaintiff's complaint, or any part thereof, prior to the third day of March, 1905, when he wrongfully entered it as set forth in Plaintiff's complaint herein.

8.

Plaintiff denies that the defendant is the owner of said property, or any part thereof, or that the plaintiff has no interest therein, and alleges the fact to be as to the ownership of said property, as set forth in plaintiff's complaint herein.

24 For its first affirmative reply to said first affirmative defense in said first amended answer contained, said plaintiff shows the Court as follows:

1.

That on the sixteenth day of May, 1889, one Chester A. Congdon and his wife, Clara B. Congdon, being the owners of the west half of the southeast quarter and the east half of the southwest quarter of section 24 twenty-four, in Township Thirteen North, Range Eighteen east of Willamette Meridian, situated in Yakima County, state of Washington, excepting ten acres thereof, known as Charles M. Holton's ten acres, caused to be made, executed and acknowl-

edged, according to the laws in the state of Washington, in such case provided, a plat or map of said land, named and called thereon Capitol Addition to North Yakima, Washington, wherein and whereon said land was represented as divided into blocks, lots, streets and other subdivisions thereof, delineated on said plat in the usual manner of delineating and representing by town plats, the subdivisions of lands into streets, alleys, blocks, lots and other subdivisions, to-wit: town sites; that said plat or map, to wit: Capitol Addition to North Yakima, Washington, was filed for record in the office of the County Auditor of Yakima County, May the twenty seventh, 1899, and is of record therein.

That a part of said land so owned by said Chester A. Congdon and Clara B. Congdon, and covered by, and delineated on said plat, and in said Capitol Addition to North Yakima, Washington, was not divided into blocks or lots; that said part or tract not so divided was represented and delineated on said plat or map, and was thereon marked and named "Reserved," and said part of said land
25 so marked and named "Reserved" on said map or plat was, according to said map or plat, bounded on the Northerly line by West Chestnut Street; on the Easterly side by Seattle Avenue; on the Southerly side by West Spruce Street; and on the Westerly side by Walla Walla Avenue, as said streets and avenues are delineated and represented upon said map or plat.

2.

That, on the twenty sixth day of September, 1904, said plaintiff, the Ontario Land Company, then being the owners of said tract of land in said Capitol Addition to North Yakima, and in said plat or map thereof delineated and represented and thereon named and marked "Reserved," having succeeded to the ownership and title therein of said Chester A. and Clara B. Congdon, made, executed and acknowledged, and on the twenty seventh of September, 1904, caused to be filed with the County Auditor of said Yakima County, a plat or map thereof, to wit: of said tract "reserved," whereon and whereby said tract marked "Reserved" was represented and delineated as divided into lots, blocks, streets and alleys on said plat, represented and delineated in the customary manner of delineating on, and representing by town plats, the subdivision of lands into lots, blocks and streets; that the plat last aforesaid is Heerman's Addition to North Yakima, Washington, referred to in the complaint in this action, and on said plat bears his name.

That the tracts of land described in the first and second causes of action respectively, in plaintiff's complaint herein, and each and every of said tracts of land, are and at all times in defendant's answer herein, were situated in, and comprised a part of, said tract of land delineated on said plat of Capitol Addition to North
26 Yakima, and thereon marked and named "Reserved" as aforesaid.

At no time mentioned in defendant's answer herein, was there, and there is not now in said Capitol Addition to North Yakima, nor

elsewhere nor at all any Block Three Hundred and fifty-two nor any block Three Hundred and seventy-two and, at no time mentioned in said answer, was there, and there is not now, on said plat or map of Capitol Addition to North Yakima, delineated, marked or represented or named or numbered, any block numbered three hundred and fifty-two nor any block numbered three hundred and seventy-two.

That in Yakima County, Washington, there is no Capitol Addition to North Yakima, nor any tract of land, nor map nor plat called such, other than the aforesaid Capitol Addition and aforesaid map and plat thereof, and that the words: "All of blocks numbered three hundred and fifty-two and three hundred and seventy-two of Capitol Addition to North Yakima," in and by the said answer of defendant alleged to be in the deed therein alledged to have been executed to said J. E. Yordy by E. G. Peck, and in said answer, alledged to be the words in said deed, descriptive of the lands in said answer alledged to be conveyed by said deed, do not describe the lands referred to in plaintiff's complaint herein nor any part or portion thereof, nor do any of said words describe said land or any part or portion thereof, and that the said words do not have, and that no part thereof have any application whatsoever to, nor are they or any of them, descriptive of the land described in said complaint referred to, nor any part thereof, and that the following words, letters, numbers and figures contained in the summons and notice in the proceeding in said Court, referred to in defendant's said answer, and entitled: Yakima County, State of Washington,
27 as plaintiff, *vs.* Edward Whitson, *et al.,* to wit: the following words, letters, figures and numbers, to-wit: "Capitol add N. Yakima, all of b 352," have no application to nor are they nor any of them descriptive of, nor do they or any of them identify the land referred to in plaintiff's complaint herein, nor any part thereof.

And that the following words, letters and figures in said notice notice and summons contained, to-wit: "Capitol add N. Yakima, all of b. 372," are not descriptive of, nor do they or any of them apply to, or identify the land or any part thereof, described in plaintiff's complaint.

And that the following words and figures in the petition or application for judgment, and in the judgment or decree in the said proceedings of Yakima County *versus* Edward Whitson, *et al.,* to wit: the following: "Capitol Add. to North Yakima, all of Block 352," have no application to, nor do said words or any thereof, describe or identify the land referred to in plaintiff's complaint herein, nor any part thereof.

And that the following words in said application and petition and judgment and decree, to-wit: "Capit-l Add. to North Yakima, All of Block 372," have not any application nor do said words nor any of them describe or identify the lands or any thereof, described in plaintiff's complaint.

For its second affirmative reply to said first affirmative defense in said first amended answer contained, the plaintiff shows the following facts:

28 That the deed in the said first affirmative defense of defendant therein alleged to have been executed to defendant J. E. Yordy, by E. G. Peck, as County Treasurer, and the summons, notice, petition, judgment and decree in the proceedings referred to in said affirmative defense, and therein alleged to be entitled Yakima County, State of Washington, Plaintiff, *vs.* Edward Whitson, *et al.*, are null, void and of no force and effect upon the lands or any thereof, described in plaintiff's complaint, on the title thereto, or against said plaintiff in this, to wit:

That on the sixteenth day of May, 1889, one Chester A. Congdon and his wife Clara B. Congdon, being the owners of the West half of the South East quarter and the East half of the South West quarter of Section twenty-four in Township thirteen North, Range Eighteen, East of the Willamette Meridian, situated in Yakima County, State of Washington, excepting ten acres thereof, known as Charles M. Holton's ten acres, caused to be made, executed and acknowledged, according to the laws of the State of Washington, in such case provided, a plat or map of said land, named and called thereon Capitol Addition to North Yakima, Washington, wherein and whereon said land was represented as divided into, blocks lots, streets and other subdivisions thereof, delineated on said plat in the usual manner *or* delineating and representing by town plats, the subdivisions of lands into streets, alleys, blocks, lots and other subdivisions, to wit: town sites: that said plat or map, to wit: Capitol Addition to North

29 Yakima, Washington, was filed for record in the office of the County Auditor of Yakima County, May the twenty seventh, 1899, and is of record therein.

That a part of said land so owned by said Chester A. Congdon and Clara B. Congdon, and covered by and delineated on said plat and in said Capitol Addition to North Yakima, Washington, was not divided into blocks or lots: and that said part or tract not so divided was represented or delineated on said plat or map, and thereon marked and named "Reserved," and said part of said land so marked and named "Reserved" on said map or plat was, according to said map or plat, bounded on the Northerly side by West Chestnut Street; on the easterly side by Seattle Avenue; on the southerly side by West Spruce Street; and on the westerly side by Walla Walla Avenue, as said streets and avenues are delineated and represented upon said plat or map.

That, on the twenty-sixth day of September, 1904, said plaintiff, the Ontario Land Company, then being the owners of said tract of land in said Capitol Addition to North Yakima, and in said plat or map thereof delineated and represented and thereon named and marked "Reserved," having succeeded to the ownership and title therein of said Charles A. and Clara B. Congdon, made, executed and acknowledged, and on the twenty seventh day of September, caused to be filed with the County Auditor of said Yakima County, a plat or map thereof, to wit: of said tract reserved, whereon and

whereby said tract marked "Reserved" was represented and delineated as divided into lots, blocks, street- and alleys on said plat, represented and delineated in the customary manner of delineating on
30 and representing by town plats, the subdivision of lands into lots, blocks and streets; that the plat last aforesaid is Heerman's Addition to North Yakima, Washington, referred to in the complaint in this action, and on said plat bears said name.

That the tracts of land described in the first and second causes of action respectively, in plaintiff's complaint herein and each and every of said tracts of land, are, and at all times in defendant's answer herein, were situated in, and comprised a part of, said tract of land delineated on said plat of Capitol Addition to North Yakima, and therein marked and named "Reserved" as aforesaid.

At no time mentioned in defendant's answer herein was there, and there is not now in said Capitol Addition to North Yakima, any block Three Hundred and Fifty-two nor any Block Three Hundred and Seventy-two, and at no*t* time mentioned in said answer, was there, and there is not now, on said plat or map of Capitol Addition to North Yakima, delineated, marked or represented, or named or numbered, any block numbered three hundred and fifty-two nor any block numbered three hundred and seventy-two.

That, in Yakima County, Washington, there is no Capitol Addition to North Yakima, nor any tract of land, nor map nor plat called such, other than the aforesaid Capitol Addition and aforesaid map and plat thereof, and that the words, "All of Blocks numbered three hundred and fifty-two and three hundred and seventy-two of Capitol Addition to North Yakima, Washington," in and by the said answer of defendant, alle*d*ged to be in the deed therein alle*d*ged to have been executed to said J. E. Yordy by E. G. Peck, and in
31 said answer, alle*d*ged to be the words in said deed, descriptive of the lands in said answer alle*d*ged to be conveyed by said deed, do not describe any land or lands whatsoever, and have no application to, and are not descriptive of, and do not identify the lands or any thereof in plaintiff's complaint described, nor any land or lands whatsoever, and that the following words, letters and figures contained in the summons and notice in said proceedings in said Court, referred to in said defendant's answer, and entitled: Yakima County, State of Washington, Plaintiff, *versus* Edward Whitson *et al.*, Defendants, to wit, the following words, letters, figures, numbers: Capitol add. N. Yakima, all of b 352," have no application to, nor are they or any of them descriptive of, nor do they or any of them identify the lands or any of them, described in the plaintiff's complaint herein, nor any part thereof, nor any lands whatsoever, and that there are not in said summons or notice, any words, letters, figures, numbers, characters, signs or anything whatsoever, whereby the lands or any thereof, described in plaintiff's complaint, are described or which are applicable to, or describe the said lands or any thereof; that the following words, letters, figures, numbers, to-wit: "Capitol add. N. Yakima all of B 372" in said notice and summons contained, are not descriptive of, nor do any of them, apply to, or identify, the land or any part thereof described in plaintiff's com-

plaint, or any land whatsoever, and that the following words and figures in the said petition or application for judgment, and in the alleged judgment or decree in said proceedings, entitled as aforesaid, to wit: "Capitol Add. to North Yakima, all of block 352," have no application to, nor do said words or any thereof, describe or
32 identify the land referred to in plaintiff's complaint herein, nor any part thereof, nor do they describe, identify or have application to any land or lands whatsoever, and that the following words in said application, petition, alle*d*ged judgment or decree, to-wit: Capit-l Add. to North Yakima, all of block 372," have no application to, nor do said words or any part thereof, describe or identify the lands or any part thereof, described in plaintiff's complaint, or any land or lands whatsoever, and, that there are not, in the said alle*d*ged judgment or decree or notice, or petition, any words, characters, signs, figures or other things whereby the lands in plaintiff's complaint described or any part thereof, are described, identified, or by which said lands or any thereof are capable of identification.

That prior to the second day of September, 1902, the alle*d*ged time of the alle*d*ged judgment or decree, or at any other time there was not filed, with the Clerk of the said Superior Court for Yakima County, a ertificate of delinquency on the property, to wit: lands described in plaintiff's complaint, or any part thereof, in pursuance of section three of Act of the Legislature of the State of Washington, approved the twentieth day of March, 1901, which said section is printed on page Three Hundred and Eighty-five and Three Hundred and Eighty-six of the Session Laws of the State of Washington for 1901, or otherwise.

That the said proceedings in the said Superior Court, referred to in said answer, and entitled as aforesaid, was not commenced
33 within the time limited by law, to-wit: before the first day of January, 1902, as required by Section Four of the act of the Legislature last aforesaid, to wit: there was not filed with the Clerk of the said Court, in the said proceedings or other proceedings, prior to the third day of January, 1902, upon which day the said summons was filed, any paper, process, or other proceedings.

That the said application or petition for judgment was not filed with the Clerk of the said Court, or in said proceeding, until the day upon which the said alle*d*ged or pretended judgment was entered, to-wit: September second, 1902.

That by reason of there being no delinquency certificate upon said land, filed as aforesaid, and by reason of the said proceedings not having been commenced as aforesaid, within the time limited by law, and by reason of the said application or petition for judgment not having been filed until the entry of said judgment as aforesaid, the said Court was, in rendering the said judgment or decree, without jurisdiction in the premises and without power or jurisdiction to render the same, or any part thereof.

That the lands described in the said Plaintiff's complaint, or any part thereof, were not in any year subsequent to 1889, or at any year or at any time referred to in defendant's answer, listed or de-

scribed or valued or assessed in the real property assessment book or roll for said Yakima County, nor was any tax of any kind or nature, levied or assessed upon or against, or on account of said lands or any part thereof, in and for any year subsequent to 1889, or any
34 year or time referred to in defendant's answer.

That, on June twenty fifth, 1903, a written instrument was filed with the County Auditor for Yakima County, purporting to be a certificate of delinquency and purporting to describe the real property on which said certificate alle*d*ged taxes were delinquent for 1893, and also, for some other year or period not set forth in said certificate, said certificate purporting to have been executed January thirty first, 1898, and to be signed by — then County Treasurer of said County; that the words in said certificate purporting to describe the property covered thereby, are "B. 352 Capitol Add. N. Yakima"; that said certificate contains no words, figures or characters descriptive of any property, except the foregoing, and that the said words and figures do not describe, and are not applicable to, and do not identify the lands or any thereof described in plaintiff's complaint, or any part thereof, nor do the said words and figures identify or describe any land whatsoever; that said certificate is void for the following reasons:

First. It describes no land;

Second. It does not state the year or years for or in which the said alleged taxes were levied.

Third. There was not, nor is any authority of law for the issuance thereof on said January thirty first, 1898.

That on June twenty-fifth, 1903, there was filed with the County Auditor for Yakima County, an instrument purporting to be a certificate of delinquency, in every respect similar to, and bear-
35 ing the same date, and purporting to be signed by the same person as the certificate of delinquency aforesaid, except that the first named certificate was numbered "1851," and the second named certificate was numbered "1912," and that the words in the last named certificate, purporting to describe the property upon which the same was issued, were, and are the following words, figures and letters: "B. 372 Capitol Add. to No. Yakima." That the said words and characters purporting to be descriptive of property, are not applicable to, and do not describe or identify the property or any thereof, in plaintiff's complaint described, nor do they identify or describe any property whatsoever; that said certificate is null and void for the reason that there was no authority of law to execute the same on the thirty first day of January, 1898, and for the further reasons that the same describes no property, and does not state the years or year in or for which the taxes therein set forth were levied.

That neither of said certificates of delinquency were in fact signed or executed by the then County Treasurer, to-wit: Matt. Bartholet, and neither of said certificates are, or ever were, filed with the Clerk of said Court for Yakima County; that said certificates, and each thereof, purport to be executed to Yakima County, the first purporting to be executed in the sum of Forty-five and 35/100 Dollars, and the latter in the sum of Forty-five and 37/100 Dollars.

That, by reason of the invalidity of said purported certificates, and each thereof as aforesaid, and for the reason that said cer-
36 tificates were not, nor was either thereof, filed with the Clerk of said Court prior to the alleged entry of the said alleged judgment and decree, or at all, as well for the reasons hereinbefore set forth, the said judgment and decree and deed are null and void.

Wherefore Plaintiff prays judgment as in its complaint.

FRED PARKER,
SNYDER & PREBLE,
Pl'ff's Att'ys.

37 STATE OF WASHINGTON, *Yakima County, ss:*

Albert S. Congdon, being first duly sworn, says that he resides at North Yakima, in the state of Washington; that he is the agent of the Ontario Land Company, the plaintiff named in the foregoing complaint, duly appointed by said company, by writing, signed by the president and chief officers of said plaintiff, and attested by its *corporal* seal, and by said appointment in writing, duly authorized to accept service of process in any action or suit pertaining to the property or business or transactions of the said plaintiff within the state of Washington, and that said appointment is made and filed in the office of the secretary of state of the said state of Washington, and is in all respects, in all compliance with Section Three of the Act of the Legislature of the State of Washington, approved on March the twenty eighth, 1890, entitled "An act relating to foreign corporations, and to repeal certain laws in conflict thereof," that he has read and knows the contents of the foregoing reply, and that he believes the same to be true, all and singular.

ALBERT S. CONGDON.

Subscribed and sworn to before me, this eighth day of May, 1905.

VESTAL SNYDER,
Notary Public, Residing at North Yakima, Washington.

38 Endorsements: 3341. In Superior Court, Yakima County. Ontario Land Co., Pl'ff, *vs.* J. E. Yordy and Minnie E. Yordy, Def't-. Reply. Filed May 8th, 1905. J. W. Day, County Clerk. By Edwd. E. Cleaver, Deputy. Service by copy of within admitted May 8, 1905. Ira P. Englehart, Att'y for defendants.

39 In the Superior Court of the State of Washington for Yakima County.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
JAY YORDY (in the Complaint Herein Called J. E. YORDY) and MINNIE E. YORDY, Defendants.

Decision.

That above entitled action having been tried before said Court at the Court-room in North Yakima, Washington, on the — day

of ——, 1905, E. B. Preble and Fred Parker appearing for plaintiff, and Ira P. Englehart appearing for defendants, the said Court hears the testimony submitted and the arguments of the said counsel upon said trial, and takes the said cause under advisement and now, being fully advised in the premises, makes the following findings of fact and conclusions of law, to-wit:

Findings of Fact.

1.

Said plaintiff, the Ontario Land Company, now is, and ever since a time prior to May twenty-fourth, 1890, was, a corporation, duly created, organized and existing under and in virtue of the laws of the state of Minnesota, and theretofore had, and ever since has complied with the laws of the state of Washington in respect to foreign corporations and, by the laws of the state of Washington, now is, and ever since a time prior to May twenty-fourth, 1890, was, duly authorized to do business and to receive the conveyances of land in said state of Washington, hereinafter set forth.

40 2.

That on May twenty-fourth, 1890, the said plaintiff was, and ever since said date, has been, and now is, the owner of the following described lands, and of an indefeasible estate in fee simple therein and entitled to the possession thereof, to-wit: Lots 9, 10, 11, 12, 13 and 14 in Block One of Heerman's Addition to North Yakima in Yakima County in the state of Washington, according to the official plat and survey thereof, now of record in the office of the County Auditor for said Yakima County; and that, on said May twenty-fourth, 1890, the said plaintiff was, ever since said date has been, and now is, the owner of the following described land and seized of an indefeasible estate in fee simple therein, and entitled to the possession thereof, to-wit: Lots 9, 10, 11, 12, 13, 14, 15 and 16 in Block Two in Heerman's Addition to North Yakima, according to the official plat thereof, of record in the office of the County Auditor for said Yakima County, all of the above described land being situate in Yakima County, Washington.

3.

That the plaintiff deraigns its title and right to the possession of the said land as aforesaid, as follows, to-wit: That on, and prior to, January eighteenth, 1887, the United States of America, then being the owner of said land by letters patent, bearing date January eighteenth, 1887, patented and conveyed the said land, together with other lands, to one Charles M. Holton, and that, on February sixteenth, 1889, the said Charles M. Holton and his wife —— Holton, being then the owners and in possession of said land in virtue of said patent, conveyed the same, together with other
41 lands, in fee simple, to one Chester A. Congdon; that, on May twenty-fourth, 1890, said Chester A. Congdon and his wife, Clara B. Congdon, being then, in virtue of the deed of con-

veyance, executed by said Holton and wife, the owners of, and in possession of the said land, conveyed the said land, together with other lands, in fee simple absolute, to said plaintiff, the Ontario Land Company, and that, forthwith thereupon, the said plaintiff, the Ontario Land Company, under and in virtue of the said conveyance to it, entered into the possession of the said lands and of all thereof, and remained in such possession until ousted therefrom, as hereinafter set forth, by said defendants.

4.

That, on the first day of March, 1905, the said plaintiff, then being the owner and seized of said lands and of an indefeasible estate in fee simple therein, and in possession thereof, and entitled to the possession thereof, the said defendant, Jay Yordy, against the consent and remonstrance of plaintiff, entered into, and possessed, the said lands, and ever since the said first day of March, 1905, has against the consent and remonstrance of plaintiff, held possession thereof, and ever since said date, has withheld the possession of said land from the said plaintiff and ousted plaintiff therefrom, and from all thereof.

5.

The said defendants, Jay Yordy and Minnie E. Yordy are husband and wife, and were such at the time of the entry of the said Jay Yordy into the said lands.

42 6.

That, at the time of the commencement of this action, and prior thereto and since, the said defendants and each of them claimed, adversely to the said plaintiff, an estate and interest in said land, to-wit: claimed to be the owners thereof.

7.

That the words, purporting to be descriptive of property purporting to be conveyed in and by that certain tax deed, bearing date May second, 1903, executed by E. G. Peck, County Treasurer of Yakima County, to said Jay Yordy, to-wit: the following words: "All of blocks numbered three hundred fifty-two (352) and three hundred and seventy-two (372) of Capitol Addition to North Yakima, Washington," do not describe, and have no application to the said lands, or any thereof, hereinbefore described, of the said plaintiff, and that *they* are no words, characters or figures in the tax lists and tax records of Yakima County, or in the assessment rolls of property for taxation in said county, referred to in its pleadings or evidence herein, or in the files and proceedings of the case of Yakima County *versus* Edward Whitson *et al.*, referred to in the pleadings in this action, that describe or have any application to the above described lands of the plaintiff, or any of them.

Conclusions of Law.

1.

The said adverse claim of the said defendants and each of them to some estate and interest or claim in, to or upon the above described lands of the plaintiff, to-wit: their claim to be the owners of
43 said land, is wrongful and unlawful and without foundation in law or equity.

2.

That the said entry of the said Jay Yordy into the said lands of the plaintiff, and his said possession thereof, and withholding the same from the said plaintiff, was and is unlawful and wrongful.

3.

That the said tax deed, executed by said Peck, was not and is not operative as a conveyance or otherwise, upon the said lands of the plaintiff or any thereof.

4.

That the said proceedings of the Assessor and taxing officers of said county, set forth upon the said taxing records and lists of said County, and the proceedings in the said case of Yakima County *versus* Edward Whitson *et al.*, were inadequate to charge the said lands or any thereof with any lien or charge whatsoever, and were inoperative upon the same, or upon any thereof.

5.

That the said plaintiff is entitled to the judgment and decree of this Court, adjudging it the possession of the said land, and awarding it a writ of possession or restitution thereof and quieting the title of the said plaintiff as against the said defendants and their said claim, and perpetually enjoining defendants against the assertion of any right or title adverse to the said plaintiff in the said premises, or any thereof, and that plaintiff is entitled to judgment for its costs and disbursements herein.

H. B. RIGG, *Judge.*

44 Endorsements: 3341. In the Superior Court of the State of Washington, for Yakima County. The Ontario Land Company, a corporation, Plaintiff, *vs.* Jay Yordy (in the complaint herein called J. E. Yordy) and Minnie E. Yordy, Defendants. Decision. Filed for Record Sept. 14th, 1905, and Recorded in Vol. L of Superior Court Journal, page 375. J. W. Day, County Clerk. (Compared.)

45 In the Superior Court of Yakima County, State of Washington.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
JAY YORDY (in the Complaint Herein Called J. E. YORDY) and MINNIE E. YORDY, Defendants.

Judgment.

The above entitled action coming on for hearing upon the application of the above named plaintiff, for a judgment according to the decision of said Court, heretofore made and filed herein, Snyder & Preble and Fred Parker appearing for plaintiff, and the said Court having heretofore made its findings of fact and conclusions of law, in favor of the said plaintiff, and against the said defendants in this action, it is now here ordered, adjudged and decreed that the said plaintiff have and recover of the said defendants, the following described lands and premises and the possession thereof, situate in Yakima County in the state of Washington, to-wit: Lots 9, 10, 11, 12, 13, and 14, in Block One of Heerman's Addition to North Yakima, in Yakima County in the State of Washington, according to the official plat and survey thereof, now of record in the office of the County Auditor for said Yakima County, and Lots 9, 10, 11, 12, 13, 14, 15 and 16 in Block Two in Heerman's Addition to North Yakima, according to the official plat thereof, of record in the office of the County Auditor of said Yakima County.

And it is further ordered adjudged and decreed that, for said purpose, the said plaintiff have out of said Court, a writ of execution, to-wit: of restitution and possession of said land.

It is further ordered and decreed that the said defendants,
46 Jay Yordy and Minnie E. Yordy and each and both of them be, and hereby are, severally barred and estopped and enjoined from having or claiming any right or title adverse to the said plaintiff, in the above described lands and premises or in any thereof.

It is further ordered that plaintiff recover from said defendants, its costs and disbursements in this action, in the sum that the same shall be taxed and that execution issue therefor.

Done by the Court this ninth day of September, 1905.

H. B. RIGG, *Judge.*

Endorsed: Filed for record Sept. 14th 1905, and recorded in Vol. L of Superior Court Journal, page 378. J. W. Day, County Clerk.

47 In the Superior Court of the State of Washington in and for the County of Yakima.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
JAY YORDY (in the Complaint Herein Called J. E. YORDY) and MINNIE E. YORDY, Defendants.

Notice of Appeal.

To the Ontario Land Company, a corporation, plaintiff in the above entitled cause and to Snyder & Preble and Fred Parker, Attorneys for said plaintiff:

You and each of you will please take notice, That the defendants in the above entitled action, and each of them, hereby appeals to the Supreme Court of the State of Washington, from the decision, findings of fact, conclusions of law, decree and judgment therein entered in the Superior Court on the 14th day of September, 1905, in favor of the plaintiff in the above entitled action and against said defendants and each of them, and from the whole thereof, and from every part thereof.

Dated December 7th, 1905.

IRA P. ENGLEHART AND
LEE C. DELLE,
Attorneys for Defendants.

Service accepted and copy received this 7th day of December, 1905.

SNYDER & PREBLE,
Per E. B. PREBLE,
Attorneys for Above Named Plaintiff.

Endorsed: Filed for record Dec. 7th 1906, and recorded in Vol. L of Superior Court Journal, page 489. J. W. Day, County Clerk, by Edw. E. Cleaver, Deputy.

48 In the Superior Court of the State of Washington for Yakima County.

THE ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
JAY YORDY (in the Complaint Herein Called J. E. YORDY) and MINNIE E. YORDY, Defendants.

Appeal Bond.

Know all men by these presents: That we, Jay Yordy and Minnie E. Yordy as principals, and C. H. Wilfong and Walter J. Reed, as sureties, are held and firmly bound unto the Ontario Land Company,

a corporation, the plaintiff above named, in the just and full sum of Two Hundred Dollars ($200.00), for which sum, well and truly to be paid, we bind ourselves and our and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 11th day of December, A. D. 1905.

The condition of this obligation is such that whereas, the above named plaintiff on the 9th day of September, A. D. 1905, recovered judgment against the defendants above named, ejecting them from certain property in the County of Yakima, State of Washington, and enjoining them from asserting any title thereto, and for plaintiff's costs, which decree and judgment was entered and filed September 14th, 1905, in the Superior Court of Yakima County, and is recorded in the Superior Court Journal page 378 of said Court.

And whereas the above named principals have heretofore given due and proper notice that they appeal from said decision and judgment of said Superior Court to the Supreme Court of the State of Washington.

49 Now Therefore, If the said principals Jay Yordy and Minnie E. Yordy shall pay to The Ontario Land Company, a corporation, the plaintiff above named, all costs and damages that shall be adjudged against them on the said appeal or the dismissal thereof not exceeding two hundred dollars, then this obligation to be void; otherwise, to remain in full force and effect.

JAY YORDY AND
MINNIE E. YORDY,
By I. P. ENGLEHART. [SEAL.]
WALTER J. REED. [SEAL.]
C. H. WILFONG. [SEAL.]

STATE OF WASHINGTON, *County of Yakima, ss:*

C. H. Wilfong and Walter J. Reed, sureties on the within bond, each being first duly sworn, each on oath for himself, does say: I am not a Counsellor or attorney at Law, Sheriff, Clerk of the Superior Court, or other officer of such Court, and am a *bona fide* resident of the County of Yakima, State of Washington. I am worth the sum of Two hundred Dollars, over and above all debts and liabilities, and exclusive of property exempt from execution.

C. H. WILFONG.
WALTER J. REED.

Subscribed and sworn to before me this 11th day of December, A. D. 1905.

[NOTARY SEAL.] IRA P. ENGLEHART,
Notary Public for the State of Washington,
Residing at North Yakima, Washington.

Endorsed: Filed for Record Dec. 11th 1905, and recorded in Vol. L of Superior Court Journal, page 515. J. W. Day, County Clerk. By Edw. E. Cleaver, Deputy. Court Commissioner in and for Yakima County, Wash.

50 STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. W. Day, County Clerk and *ex-officio* Clerk of the Superior Court of the State of Washington, in and for the County of Yakima, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the files and records in the above entitled action as I have been directed by the appellant to transmit to the Supreme Court of the State of Washington.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court, at North Yakima, this 1st day of May, A. D. 1906.

[Superior Court Seal.]

J. W. DAY,
County Clerk and ex-Officio Clerk of said Superior Court.

51 6233.

In the Superior Court of the State of Washington in and for the County of Yakima.

THE ONTARIO LAND COMPANY, Plaintiff,
vs.
J. E. YORDY and —— YORDY, His Wife, Defendants.

Notice of Filing Bill of Exceptions and Statement of Facts.

Filed May 4, 1906. C. S. Reinhart, Clerk.

To the above and within named Ontario Land Company, plaintiff above named, and to Snyder & Preble and Fred Parker, attorneys of record for said plaintiff:

You and each of you will take notice that the above named J. E. Yordy and —— Yordy, his wife, defendants in the above entitled cause, and proceeding, have caused to be filed in the said cause and with the Clerk of said Court the within and foregoing proposed statement of facts and bill of exceptions in said cause, and that the said defendants have proposed, and hereby do propose the foregoing and within as a bill of exceptions and statement of facts in the above entitled cause and proceeding, and will, in due course move that the same be made of record in the said cause, and that the same, and that the matters and proceedings embodied therein be certified by the Honorable H. B. Rigg, Judge of said Court, to be matters and proceedings occurring in the said cause, and that the same be further certified as containing all the material facts, matters and proceedings heretofore occurring in the said cause and not already a part of the record therein, and as containing all of the testimony and evidence received or offered upon the trial of the said cause, and that, upon said bill of exceptions and statement of facts being certified, the defendant will move the said Judge to annex

thereto, as part thereof, all written evidence and instruments referred to therein.

IRA P. ENGLEHART,
Sny
Attorney for Defendants.

Due service by copy of the foregoing proposed bill of exceptions and statement of facts and notice of the filing thereof, upon the undersigned Snyder & Preble and Fred Parker, attorneys for the above named plaintiff in said cause on this 6th day of December, 1905, and after the filing thereof with the clerk of said Court in the said cause is hereby acknowledged.

SNYDER & PREBLE,
Per PREBLE,
Attorneys for Plaintiff.

52 No. —.

THE ONTARIO LAND COMPANY
vs.
J. E. YORDY and —— YORDY, His Wife.

53 *Index.*

THE ONTARIO LAND COMPANY, Plaintiff,
vs.
J. E. YORDY and —— YORDY, His Wife, Defendants.

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54 In the Superior Court of Yakima County, State of Washington.

THE ONTARIO LAND COMPANY, Plaintiff,
vs.
J. E. YORDY and —— YORDY, His Wife, Defendants.

This cause came on regularly for hearing the 2nd day of June, 1905, Preble & Snyder appearing for plaintiff, and Ira P. Englehart and Lee C. Delle, Esquires, appearing for defendant-, at which time the following proceedings were had.

WILBUR CROCKER, a witness called on behalf of Plaintiff, being first duly sworn on direct examination, testified as follows:

(Mr. PREBLE:)

Q. You are the deputy auditor of Yakima County are you?
A. Yes sir.
Q. Will you please, if you have the same, inspect Book A of patents, and turn to pages 10 and 11—is that the book that you have from the records of the auditor of Yakima County?
A. Yes sir.
Q. What is it?
A. Volume A of United States patents.
Q. These are the records of the United States patents?
A. Yes sir.
Q. You have brought the same from the County Auditor's office?
A. Yes sir.

55 Mr. PREBLE: We offer in evidence pages 10 and 11 of said Book A.

Copy of same is hereto annexed marked "Plaintiff's Exhibit 1."
(No objections.)

The COURT: You will furnish certified copies of the record?

Mr. PREBLE: Yes.—In order that the record may show—this, is a conveyance to Charles M. Holton for the east half of the southwest quarter and the west half of the southeast quarter, section twenty-four township 13 north, range 18, E. W. M. and embraces the land in controversy.

The COURT: Can't counsel agree upon the fact as to this land?

Mr. PREBLE: This is very brief your Honor, I think I can do it quicker perhaps in this way.

Q. Mr. Crocker, what is the book that you now have in your hand?
A. Volume 1 record of Deeds.
Q. Deeds of Yakima County?
A. Yes sir.

Mr. PREBLE: We offer in evidence pages 222, 223, 224, 225, being records of Deeds from Charles L. Holton and wife to Chester A. Congdon to the lands described in the patent.

Copy of same is hereto annexed, marked "Plaintiff's Exhibit 2."
(No objection.)

Q. What is this book that you now have in your hand?
A. Volume B of miscellaneous records, of Yakima County.
Q. Is that a record of Yakima County?
A. Yes sir.

Mr. PREBLE: We offer in evidence of said book pages 119 to 121 being the records of the power of attorney from Clara B. Congdon to Chester A. Congdon.

Copy of same is hereto annexed marked "Plaintiff's Exhibit 3."

(No objection.)

Q. Mr. Crocker, what is the book that you now have?
A. Volume L of the Record of Deeds of Yakima County.

56 Mr. PREBLE: We offer in evidence pages 516 and 517 being the record of a deed from Chester A. Congdon and wife to the Ontario Land Company, the plaintiff in this suit covering the lands in said patent.

Copy of same is hereto annexed marked "Plaintiff's Exhibit 4."

(No objection.)

Q. What book have you now in your hand?
A. It is Volume H of Plats.
Q. Is it a record of Yakima County and comes from the office of the Auditor of Yakima County?
A. Yes sir.

Mr. PREBLE: We offer in evidence page 29 being a record of the town plat of a townsite named thereon, capitol addition to North Yakima.

Copy of same is hereto annexed marked "Plaintiff's Exhibit 5."

Mr. ENGLEHART: Objected to on the ground that it is incompetent.

The COURT: Objection overruled; exception.

The COURT: It is understood that certified copies are to be substituted in all these matters.

Mr. PREBLE: Yes. We also offer in evidence page 115 of said Volume A, of town plat records, being a record of the townsite of Herman's Addition to North Yakima, and the lands in this complaint are so described.

Copy of same is hereto annexed marked "Plaintiff's Exhibit 6."

Mr. ENGLEHART: Objected to on the ground that it is incompetent, irrelevant and immaterial.

(Objection overruled; exception.)

(Testimony of witness closed.)

57 A. S. CONGDON, a witness called on behalf of the Plaintiff, being first duly sworn on direct examination, testified as follows:

(Mr. PREBLE:)

Q. Mr. Congdon, you are an officer as I understand it of the plaintiff?
A. Yes sir.

Q. Are you the general manager in this State of the business of the Ontario Land Company, plaintiff?

A. Yes sir.

Q. How long have you represented the plaintiff?

A. 7 years, in Yakima.

Q. What is the fact as to the plaintiff having taken possession before this action was commenced of the land described in the complaint under the deeds thereof, to-wit: From Holton to Chester A. Congdon and wife, and Chester A. Condon and wife to the Ontario Land Company, which would be the east half of the southwest quarter, and the west half of the southeast quarter of section 24, township 13 north range 18, E. W. M. excepting a ten acre track belonging to Charles M. Holton.

A. The company has always been in possession of said land except the time it was owned by the city as a city park.

Q. For how long prior to the 3rd day of March, 1905, the time when the plaintiff herein has alleged that it was wrongfully ousted from the lands herein described, by defendant, was the said Ontario Land Company continuously in possession of the lands described in the complaint?

A. 7 years since I have been here. But whether the city abandoned the park prior to the time I came here I am unable to say or give the exact date.

Q. You know of at least that seven years prior to 1905 that the company was in possession of these lands?

A. Yes sir.

58 (Objected to as irrelevant, immaterial and incompetent.)
(Objection overruled.)

Q. Now on or about the 3rd day of March, 1905, do you know of any excavations or depredation having been made on the lands described in the complaint herein—that is, lots 9, 10, 11, 12, 13 and 14 in Block 1 Herman's Addition to the City of North Yakima, State of Washington, and lots 9, 10, 11, 12, 13, 14, 15, and 16 in block 2 of said Herman's addition to the City of North Yakima?

A. Yes sir.

Q. What was the extent and nature of these depredations?

A. There was a hole dug there and some trees cut down.

Q. Do you know of any body being on the land or establishing themselves there about that time?

A. Yes sir, a party named Yordy.

Q. The defendant in this action?

A. Yes sir.

Q. Do you know anything further than you have testified about these depredations?

A. No sir.

(No cross-examination.)
(Testimony of witness closed.)

59 WALTER BARRAGAR, a witness called on behalf of the plaintiff, being first duly sworn on direct examination, testified as follows:

(Mr. PREBLE:)

Mr. PREBLE: I will say to your Honor I am introducing this testimony to show the plaintiff's possession because while they admit it, they do deny these depredations—upon which we ask your Honor for an equitable injunction.

Q. Mr. Barragar, are you acquainted with this land out here in Herman's Addition that is in controversy?
A. Yes sir.
Q. On or about the 3rd day of March, 1905, or about that time, do you know of J. Yordy the defendant in this action being upon this land?
A. Yes sir.
Q. What do you know if anything about the things that he did upon that land?
A. He excavated a hole there eight or ten feet deep, and cut down some trees, and he cut down some fence in three different places.
Q. The land was then enclosed by a fence?
A. Yes sir.
Q. For how long had you known it before that?
A. Two years that I know of.
Q. To what extent did these depredations extend so far as growing trees are concerned?
A. How do you mean—how many trees were cut down?
Q. Yes, how many trees were cut down and to what extent were they cut?
A. I don't know how many I saw him at the work when he was cutting them down.
Q. Did you have any talk with Mr. Yordy about it?
A. No I didn't.

(No cross examination.)
(Testimony of witness closed.)

60 Mr. PREBLE: We rest.
Mr. ENGLEHART: Mr. Preble you have that judgment of foreclosure?
Mr. PREBLE: Yes.
Mr. ENGLEHART: We wish to introduce in evidence the judgment and foreclosure of tax lien and order of sale, which is marked as filed for record September 2nd, 1902, and recorded in Volume 1 of Tax Journal, page 520.
Mr. PREBLE: We object your honor to the said proposed evidence in offer, on the ground that the same is irrelevant, immaterial and incompetent, and particularly upon the ground that the lands described in the complaint herein are not, nor are any of said lands, or any part thereof described in the said judgment or instrument so offered in evidence, and for the further ground that said alleged

judgment, if made, was made without jurisdiction in the said court to entered the same as to the lands or any thereof described in the plaintiff's complaint; and upon the further ground that no certificate or certificates of delinquency upon the lands in question or any thereof were in fact or appeared from the said alleged judgment to have been filed with the clerk of said court prior to the entry of said alleged judgment or at any time.

The COURT: Isn't the same land involved in this suit?

Mr. PREBLE: No. No description of this land appears at all herein in this judgment.

Mr. ENGLEHART: This is a description of that land—certain lots in block- 1 and 2 in Herman's Addition, that plat was filed these years that these taxes were levied.

The COURT: Well it is supposed to be the same length.

Mr. ENGLEHART: It is the same length.

61 The COURT: Is there any other objection, Mr. Preble?

Mr. PREBLE: We object upon the further ground that the evidence offered is incompetent, that there is no summons or proof of service of summons.

(Objection overruled; exception reserved.)

Copy of same is hereto annexed marked "Defendants' Exhibit A."

62 JAY YORDY, the defendant, being first duly sworn upon his own behalf, testified as follows:

(Mr. ENGLEHART:)

Q. I will ask you if you ever received that if so, from whom and when (exhibiting a paper to witness)?

A. Yes sir, that is a deed that I received from E. G. Peck, the County Treasurer of Yakima County, on the 2nd day of May, 1903.

Q. Were you the purchaser who purchased the property?

A. Yes sir, I was.

Q. How much did you pay for it?

A. Well, I couldn't state just now the amount but it ran on well towards a thousand dollars, I think. There was a good deal of taxes delinquent, and subsequent taxes to be paid on it, I paid the full amount that the County Treasurer asked for.

Q. Are you the owner of this deed now?

A. Yes sir.

Q. Have you ever conveyed this property since that time?

A. No sir.

Mr. ENGLEHART: We will offer this deed in evidence.

Mr. PREBLE: We object to said deed being received in evidence upon the ground that it is irrelevant, incompetent and immaterial, and particularly for the reason that said deed doesn't contain any description of the land or any of the lands in controversy or described in the plaintiff's complaint, and for the further reason that no authority for the execution of said deed by E. G. Peck has been shown.

Mr. ENGLEHART: If you want the former evidence that Mr. Peck was treasurer at the time, I can put Mr. Peck on the stand.

Mr. PREBLE: Well we will not insist on that.
(Objection overruled.)
Copy of same is hereto annexed marked "Defendant's Exhibit B."

63 (Exception.)

Q. Did you take possession of this property after you came here?
A. Yes sir, quite a while afterwards, the last thing in March.
Q. Were you in possession of that land at the time this complaint was served upon you?
A. Yes sir I was.
Q. Is this property in Yakima County?
A. Yes sir.
Q. Did you cut down any trees upon this place?
A. No sir, I solemnly swear I didn't cut down any trees.
Q. Did you do anything to the trees?
A. I trimmed some of the large trees.

Cross-examination.

(Mr. PREBLE:)

Q. You dug a big hole on there, didn't you?
A. I started to dig a cellar there and expected to put a house on it.

(Testimony of witness closed.)

64 A. S. CONGDON, as a witness for defendant, testified as follows:

(Mr. ENGLEHART:)

Q. Mr. Congdon, the Ontario Land Company, is a corporation organized in what state?
A. Minnesota.
Q. What officers reside in this state?
A. None of them.
Q. Who is their representative here?
A. I am.
Q. Where do you reside?
A. North Yakima.
Q. Yakima County, Washington?
A. Yes sir.
Q. How long have you resided here?
A. 7 years.
Q. Were you a resident of North Yakima, in Yakima County, State of Washington, about the month of May, 1903?
A. Yes sir.
Q. Were you looking after the Ontario Land Company's affairs at that time?
A. Yes, for the last seven years.
Q. Did you manage and attend to their business affairs in this county during that time, paying taxes and such as that?
A. Yes sir.

Q. And you have for the last seven years?
A. Yes sir.

Mr. PREBLE: We move to strike Mr. Congdon's testimony as incompetent, irrelevant and immaterial.
(Objection overruled, exception.)

(Testimony of witness closed.)

65 E. G. PECK, a witness on behalf of defendant, being first duly sworn, testified as follows:

(Mr. ENGLEHART:)

Q. Mr. Peck, have you ever been either Deputy County Treasurer or County Treasurer of Yakima County?
A. Yes sir, four years, that is commencing the 2nd Monday in January, 1899, and ending the second Monday in January, 1903, I was Deputy County Treasurer.
Q. Were you ever County Treasurer of Yakima County?
A. Yes sir.
Q. What year did you begin?
A. The 2nd Monday in January, 1903, and ended in the 2nd Monday of January, 1905.
Q. Do you know Albert S. Congdon who has testified here?
A. I do.
Q. Did you ever have any conversation with Mr. Congdon, prior to the 2nd day of May, 1903, as to delinguent and unpaid taxes, as shown on your books for blocks 352 to 372 in Capitol Addition to North Yakima, as to these taxes being delinquent and unpaid?

(Objection as immaterial, irrelevant and incompetent.)

The COURT: I doubt its competency, but this being an equity case I will overrule it.

Q. Just state if you had a conversation with him and what that conversation was?

Mr. PREBLE: This all goes in under our objection.

A. I don't remember the conversation exactly, I do not set the time, but I remember having a talk with Mr. Congdon in regard to the taxes—and in regard to the validity of the taxes, and in regard to the question as to why they were not paid, he carried the idea that the taxes were not legal.

66 Q. State as near as you can what was said or the substance of what was said?

A. I cannot remember his exact words, the substance of the conversation is all that I can give, and I cannot remember the dates.
Q. What was the substance of the conversation?
A. The substance was that the reason the Land Company didn't pay these taxes for the year 1892, '93, '94 and '95, or whatever the years were—those embodied in the original certificate of delinquency—the time these taxes were assessed he claimed the property was not assessable because it was city property.

Q. He gave you the reasons why the company wouldn't pay the taxes and that was the reason?
A. Yes sir.
Q. In that conversation did he say that he was informed that the taxes were charged against this property.

(Objection overruled, exception.)

Q. Did he make any statement that he knew about that?
A. I do not know that he made any absolute statement, but in the talk he gave me to understand that he knew the taxes were against this property.
Q. For these years?
A. Yes sir.
Q. That is, years of this foreclosure as shown by the certificate of deliquency in these proceedings?
A. Yes sir.
Q. Was that while you were in the Treasurer's office?
A. Yes sir. The talk might have been while I was deputy or in my first year as treasurer, but it was before the foreclosure.
Q. Did he make any statement that the company would, or would not make any payment for these taxes?
A. Up to that time he did not.
67 Q. Did he give that as an excuse for their not having been paid at that time?
A. Yes sir.

Cross-examination.

(Mr. PREBLE:)

Q. Did I understand you to say, or intend to say that the property to which you refer belonged to the city of North Yakima?
A. That is the meaning that I intended to convey?
Q. To the City of North Yakima?
A. Yes sir.

Redirect examination.

(Mr. ENGLEHART:)

Q. Mr. Peck, do you mean to say that the property belonging to the City of North Yakima, or that Mr. Congdon claimed it belonged to North Yakima?
A. I mean to say that Mr. Congdon gave that as the reason why the taxes were not paid. I am not in a position to know what belonged to the city.
Q. As a matter of fact you thought it belonged to the city?
A. I never understood what years the city claimed the property for, if they ever claimed it. I never looked the matter up.

(Testimony of witness closed.)

68 W. B. DUDLEY, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

(Mr. ENGLEHART:)

Q. Mr. Dudley what years were you County Treasurer of Yakima County?

A. From 1899 to 1903.

Q. During the time that you were County Treasurer did you have any talk with Mr. Albert S. Congdon, the representative of the Ontario Land Company as to taxes on blocks 352 to 372?

A. Well it was on these four blocks, these four that were in that section there.

Q. Did you have any talk with him as a representative of that company?

(Objected to as incompetent, irrelevant and immaterial; overruled; exception.)

Q. As to these taxes being delinquent?

A. Oh yes.

Q. Was that talk before the property was sold under this foreclosure proceeding?

A. Yes sir. I couldn't say as to the length of time before.

Q. What was the talk as to that property, the substance of it?

A. The substance was that they owned that property, and he would perhaps want to take care of that as their property.

Q. It was at the time that that property was taxed on your books and before it was sold?

A. Yes sir.

Q. In that conversation did Mr. Congdon state anything about the fact that they knew that these taxes were against the property, or that they had any information as to their being against the property?

69 A. That is as I understand it, yes sir.

Q. That is the substance of the conversation?

A. Yes sir.

Q. And he gave you certain reasons why he believed they should not be paid—is that it?

A. Yes sir.

(No cross-examination.)

Mr. ENGLEHART: As soon as the Treasurer comes with these amounts why we are through.

The COURT: It can be agreed that whatever the books show was paid at that sale for those blocks would be the correct amount.

Mr. PREBLE: Certainly under our objection it is incompetent, irrelevant and immaterial.

(Testimony of witness closed.)

70 J. W. DAY, a witness called in behalf of plaintiff and duly sworn on direct examination, testified as follows:

(Mr. PREBLE:)

Q. You are the clerk of this court?
A. Yes sir.
Q. How long have you been such?
A. Since January, 1903.
Q. Prior to the time that you became clerk of this court were you Deputy Clerk?
A. Yes sir.
Q. How long prior to that were you Deputy?
A. Four years.
Q. You have been clerk and deputy clerk of this court then since March 1st, 1899?
A. Yes sir.
Q. Has there at any time ever been filed, or on file in your office in the matter or proceeding of Yakima County, State of Washington, plaintiff, *vs.* Edward Whitson, A. F. Switzer *et al.*, defendants, any certificate of deliquency upon the property described as block 352—or property described as real estate as block 352, capitol Addition to North Yakima?

(Objection, incompetent, irrelevant and immaterial.)
(Objection overruled; exception.)
Mr. ENGLEHART: It is understood then that all these matters go in under my objection?

A. There has been no certificate of delinquency filed for that described property
Q. Then the certificate of delinquency referred to as 1851 under the so-called judgment of foreclosure in said matter introduced here by the defendant has never been filed in said clerk's office?
A. No it has not been filed in the clerk's office.

71 Q. Has there ever been on file in the clerk's office of the said Superior Court, Yakima County, State of Washington, any certificate of delinquency purporting to cover block 372 of said capitol addition in North Yakima?
A. No, sir.
Q. Then there has never been on file in said office the alleged certificate of delinquency referred to in said judgment for foreclosure of tax lien as Number 1912.
A. No, sir.

Mr. PREBLE: We offer in evidence the application for a judgment in the suit of Yakima County, State of Washington, plaintiff, *versus* Edward Whitson, *et al.*, defendants and particularly the filing mark thereon showing the same to have been filed September the 12th, 1902, and we will ask Mr. Day—I think we will ask Mr. Day nothing about that. Copy of said application hereto annexed marked Plaintiff Exhibit 7.

We offer in evidence the summons by publication in said proceeding of Yakima County, State of Washington, plaintiff, *versus* Edward Whitson *et al.*, defendants, and particularly the filing mark thereof, showing it to have been filed with the clerk of said court on January 3rd, 1902, and I will ask the clerk of the court if prior to January 3rd, 1902, there were any papers whatsoever in his office in said matter?

Copy of said summons hereto annexed marked Plaintiff Exhibit 8.

A. I couldn't tell without looking up the record.

Mr. PREBLE: Will you please look it up.

(Witness excused to get record.)

72 FRANK BOND, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

(Mr. ENGLEHART:)

Q. Mr. Bond, what is your official position?
A. I am Deputy Treasurer now of Yakima County.
Q. How long have you been occupying that position.
A. Since January 9th, of this year.
Q. Before that time what position did you occupy?
A. Bookkeeper in the Treasurer's office.
Q. Have you worked in the Treasurer's office?
A. Yes sir.
Q. For how long?
A. For three years.
Q. Have you had charge and the custody of the books in the County Treasurer's office during that time?
A. Yes sir.
Q. Do these books show what taxes have been paid by J. Yordy after he purchased blocks 352 and 372 Capitol Hill Addition to North Yakima, under general tax deed May 2nd, 1903?
A. Yes sir. Our books show that the amount of the judgment was $82.11, and the 1899, 1900, 1901, and 1902, subsequent taxes was $151.16.
Q. The amount of the judgment for block 372 was $82.15, and for the years, 1899, 1900, 1901 and 1902, subsequent taxes, $115.42, and then there are tax deeds three dollars—these are the amounts paid at that time?
A. Yes sir.
Q. At the time you got this tax deed?
A. Yes sir.
Q. Has he paid any taxes on this land since?
A. He has paid for the 1903 tax $28.30.

73 Cross-examination.

(Mr. PREBLE:)

Q. Have you the book to show who, or rather on what description of property, as appears from your record, that these several sums appear that you have testified to?

A. That is the description of the property—capitol Addition to North Yakima block 352, and Capitol Addition to North Yakima, block 372.

Q. And it is those lands upon which you say Yordy paid these taxes?

A. Yes sir.

Q. As appears from your books?

A. Yes sir.

Q. And that is the only description under which the lands upon which he paid these taxes are designated upon your books?

A. Yes sir.

Q. Then the lands upon which Yordy paid these several sums of taxes to which you have testified from the records of the Treasurer's office, are designated block 352 and 372, Capitol Addition to the City of North Yakima?

A. Yes sir.

(Testimony of witness closed.)

74 J. W. DAY, recalled, testified:

A. I find that prior to January 3rd, 1902, there was a demurrer filed on the 26th day of December, 1901, that is the first filing, the next filing was January 3rd, 1902.

Mr. PREBLE:

Q. By whom was that demurrer filed?

A. That doesn't appear from this record, I would have to go through the papers to find out.

Q. Well we want to get that.

A. Here it is, Allen and Allen and Graves and Englehart.

Mr. PREBLE: We offer in evidence the summons by publication and affidavit containing the proof of publication in said suit of the County of Yakima, State of Washington, plaintiff, *versus* Edward Whitson, *et al.*, defendants, together with the filing mark upon said summons by publication.

Copy of said summons and affidavit hereto annexed marked pl'ff's Exhibit 9.

Mr. ENGELHART: Why not put in the whole record, put it all in—this all goes in under our objection.

Copy of same is hereto annexed marked "Plaintiff's Exhibits 7, 8 & 9."

(The same received.)

The COURT: I will take the matter under advisement and render my decision later.

Endorsed: No. 3341. The Ontario Land Company, plaintiff, *vs.* J. E. Yordy, and —— Yordy, his wife, Defendant-. Transcript of Testimony and Proceedings. Filed Dec. 6th. 1905, J. W. Day, County Clerk, By Edwd. E. Cleaver, Deputy.

75 PLAINTIFF'S EXHIBIT 1.

The United States of America to all to whom these presents shall come, Greeting:

Homestead Certificate No. 89. Application 5.

Whereas there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Yakima, Washington Territory, Whereby it appears that pursuant to the Act of Congress approved 20" May, 1862 "To secure Homesteads to actual settlers on the Public Domain," and the acts supplemental thereto, the claim of Charles M. Holton has been established and duly consummated in conformity to law, for the east half of the south west quarter and the west half of the south east quarter of section twenty-four in Township thirteen, north of range eighteen east of Willamette Meridian in Washington Territory containing one hundred and sixty acres, according to the official plat of the survey of the *said*, returned to the General Land Office by the Surveyor General.

Now know ye that there is therefore granted by the United States unto the said Charles M. Holton the tract of land above described

To have and to hold the said tract of land with the appurtenances thereof, unto the said Charles M. Holton and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should, the same be found to penetrate or intersect the premises hereby granted as provided by law.

In testimony whereof, I Grover Cleveland, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

76 Given under my hand at the City of Washington, the eighteenth day of January in the year of our Lord one thousand eight hundred and eighty seven, and of the Independence of the United States the One Hundred and eleventh.

By the President,

GROVER CLEVELAND.

[SEAL.] ROBT. M. McKEAN, *Secretary.*

ROBT. W. ROSS,
Recorder of the General Land Office.

Recorded Vol. 1, page 79.

Filed for record Dec. 28" 1887 at 1:30 P. M. at the request of Charles M. Holton.

6—277

77 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, W. B. Newcomb, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a Patent, filed for record in this office on the 28" day of Dec., A. D. 1887, at 1:30 P. M. and recorded in Vol. A page 10 Patents records of Yakima County, as appears from the record of said instrument now in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18" day of Dec., A. D. 1905.

W. B. NEWCOMB,
[SEAL.] *County Auditor for the County of Yakima, State of Washington,*
By R. R. FERRIS, *Deputy.*

Endorsed: 39563. Patent. United States to Charles M. Holton.

78 PLAINTIFF'S EXHIBIT 2.

Charles M. Holton and Wife
to
Chester A. Congdon.

Warranty Deed.

This indenture made this Sixteenth day of February, A. D. 1889, between Charles M. Holton and Mary E. Holton, his wife of the City of North Yakima, Yakima County, Territory of Washington parties of the first part and Chester A. Congdon of the City of St. Paul of the State of Minnesota, party of the second part,

Witnesseth: That the said parties of the first part for and in consideration of the sum of thirty three thousand seven hundred and fifty ($33,750) dollars, gold coin of the United States to them in hand paid by the said party of the second —, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns forever, all that certain real property situate in Yakima County, Territory of Washington, more particularly described as follows, to-wit: being the west half of the South East quarter, and the East half of the South West quarter of Section Twenty four (24), excepting the following described tract of land situate in the South East quarter of said South West quarter, to-wit: Beginning at a point on the South line of the said section twenty-four (24) where said line is now crossed by the fence enclosing said Holton's home place on the East side thereof; thence northerly on the line of said fence to the North east corner of said home place as now enclosed; thence Westerly on the line of the fence enclosing said home place

on the North, to the North West corner thereof; thence Southerly on the line of the fence enclosing said home place on the West to the South line of said section twenty four (24); thence East on said section line to the place of beginning; together with a tract of land not now enclosed lying North of and adjoining said home place of length equal to the width of the tract enclosed in said home place and of sufficient width that when added thereto will make in
79 all ten (10) acres; the same not being conveyed by these presents. All of the above described tracts of land being in township thirteen (13) North Range eighteen (18) East Willamette Meridian and containing two hundred and seventy (270) acres of land more or less, excepting and reserving to the said grantors from the operation of this conveyance, a perpetual right of way across said section twenty four (24) to said Holton home place tract, also excepting and reserving a perpetual right of way for such Irrigation ditch as is now used or may be required to convey water for irrigation of said Holton home place tract across said section twenty four (24) together with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining, including said Holton's entire interest in an irrigating ditch known as the "Thoronton Ditch" which crosses the said North West corner of the tract of land herein conveyed, the said grantee accepting this conveyance with full notice of the right of way of the "Broad Gauge Ditch" across said land.

To have and to hold all and singular, the above described premises, together with the appurtenances as aforesaid to the said party of the second part his heirs and assigns forever. And the said parties of the first part and their heirs, the said premises (excepting said right of way of said "Broad Gauge Ditch" and other rights of way herein reserved in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against the said parties of the first part and his heirs and against all and every person whomsoever lawfully to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above named.

CHAS. M. HOLTON. [SEAL.]
MARY E. HOLTON. [SEAL.]

Signed in the presence of
R. H. EVANS.
H. W. BORBOUR.

80 DISTRICT OF COLUMBIA, *City and County of Washington, ss:*

On this second day of March, A. D. 1889, before me the undersigned authority personally came Charles M. Holton and Mary E. Holton his wife, who are personally known to me to be the same Charles M. Holton and Mary E. Holton, whose names are subscribed to the within deed of conveyance as parties thereto and severally acknowledged the execution of the said deed for the uses and purposes

therein mentioned, and I further certify that I did examine the said Mary E. Holton, wife of the said Charles M. Holton separate and apart from her husband and that I did make known to her the contents of the said deed and she did thereupon acknowledge to me that she did execute the same voluntarily of her own free will and without any fear of or coercion from her husband.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

[Seal Commissioner of Deeds.]

R. H. EVANS,
Commissioner for the Territory of Washington in and for the District of Columbia.

Filed for record March 26, 1889, at 10 A. M. and recorded at request of Chester A. Congdon.

MATT BARTHOLET,
County Auditor,
By M. A. SCHANNO, *Deputy.*

81 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, W. B. Newcomb, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a Warranty Deed, filed for record in this office on the 26" day of March, A. D. 1889, at 10:00 A. M. and recorded in Vol. I page 222 Deeds records of Yakima County, as appears from the record of said instrument now in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18" day of December A. D. 1905.

W. B. NEWCOMB,
County Auditor for the County of Yakima, State of Washington,
[SEAL.] By R. R. FERRIS, *Deputy.*

Endorsed: Deed. (Copy.) Charles M. Holton, *et ux.*, to Chester A. Congdon. 39565.

82 PLAINTIFF'S EXHIBIT 3.

Clara B. Congdon
to
Chester A. Congdon.

Power of Attorney, Special.

Know all men by these presents, that I Clara B. Congdon, wife of Chester A. Congdon, of St. Paul Minnesota, have made, constituted and appointed and by these presents do hereby make con-

stitute and appoint Chester A. Congdon of St. Paul, Minnesota my true and lawful attorney for me and in my name place and stead to manage, control and dispose of all real property of whatever name or nature now owned or hereafter acquired by me in Washington Territory with full power and authority to execute on my behalf and in my name and stead any and all instruments, conveying, mortgaging, platting or otherwise affecting said property or any part thereof, hereby ratifying and confirming any and all of such acts of my said attorney heretofore done by him.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present hereby ratifying and confirming all that my said attorney Chester A. Congdon shall lawfully do or cause to be done by virtue of these presents.

In witness whereof I have hereunto set my hand and seal the 19th day of March one thousand eight hundred and eighty nine.

CLARA B. CONGDON. [SEAL.]

Signed, sealed and delivered in the presence of:
WM. C. BENNETT.
ELLA JENNINGS.

STATE OF MINNESOTA, *County of Ramsey, ss:*

This certifies that on this 19th day of March, 1889 before me, the undersigned, a notary public in and for said County and
83 state personally appeared the within named Clara B. Congdon who is known to me to be the identical person described — and who executed the within instrument and acknowledged to me that she executed the same freely and *and* voluntarily for the uses and purposes therein mentioned, And I further certify that Clara B. Congdon, wife of the said Chester A. Congdon, on an examination made by me separate and apart from her said husband and after I had made known to her the contents of the foregoing instrument acknowledged to me that she executed the same voluntarily of her own free will and without fear of coercion from her said husband.

In Testimony Whereof, I have hereunto set my hand and seal the day and year in this certificate first above written.

[NOTARY PUBLIC SEAL.] WM. C. BENNETT,
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA, *County of Ramsey, ss:*

I, R. T. O'Conner, Clerk of the District Court for the Second Judicial District and County aforesaid, the same being a Court of record do hereby certify that William C. Bennett Esq., before whom the annexed instrument was acknowledged was at the time of taking such proof or acknowledgment a Notary Public in and for said County of Ramsey, commissioned and sworn and duly authorized

to take the same, that I am well acquainted with the handwriting of such officer and verily believe that the signature to said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Minnesota.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at St. Paul this 19th day of March, A. D. 1889.

[SEAL DISTRICT COURT.] R. T. O'CONNER, *Clerk*,
By J. M. REDDING, *Deputy*.

84 Filed for record March 23, 1889 at 9:30 A. M. by request of R. K. Nichols.

MATT BARTHOLET, *Recorder*,
By M. A. SCHANNO, *Deputy*.

85 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, W. B. Newcomb, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a Power of Attorney filed for record in this office on the 23" day of March A. D. 1889, at 9:30 A. M. and recorded in Vol. B page 119 Misc. records of Yakima County, as appears from the record of said instrument now in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18" day of Dec. A. D. 1905.

[SEAL.] W. B. NEWCOMB,
County Auditor for the County of Yakima, State of Washington,
By R. R. FERRIS, *Deputy*.

Endorsed: 39564. (Copy.) Power of Attorney. Clara B. Congdon to Chester A. Congdon.

86 PLAINTIFF'S EXHIBIT 4.

Chester A. Congdon *et ux.*
to
The Ontario Land Company.

Quit Claim Deed.

This indenture made this 24th day of May in the year of our Lord one thousand eight hundred and ninety, between Chester A. Congdon and Clara B. Congdon, (his wife) of St. Paul, Minn., parties of the first part and The Ontario Land Company, (a corporation duly organized & existing under the laws of Minnesota), party of the second part:

Witnesseth that the said parties of the first part in consideration of the sum of One Dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents, grant, bargain and sell, release and quit-claim to the said party of the second part its successors and assigns forever, all those tracts or parcels of land lying and being in the County of Yakima and State of Washington, described as follows, to-wit: The West half of the South East quarter (W2 SE4) and East half of the South West quarter (E2 SW4) of section twenty four (24), except the following, situate in the South East quarter of said South West quarter, to-wit: beginning at a point on the south line of said section twenty-four, where said line is now crossed by the fence now enclosing Holton's home place on the east side thereof; thence Northerly on the line of said fence to the north east corner of said home place now enclosed; thence westerly on the line of the fence enclosing said home place on the North to the Northwest corner thereof southerly on the line of the fence enclosing said home place on the west to the South line of said section twenty four; thence east on said section line to the place of beginning, together with a tract of land not now enclosed lying north of & adjoining said home place of length equal to the width of the tract enclosed in said home place and of sufficient width that when added thereto will make in all ten acres; all of above described premises being in township thirteen (13) North of Range eighteen (18) East Willamette Meridian.

87 To have and to hold the same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part its successors and assigns forever.

In Testimony Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHESTER A. CONGDON. [SEAL.]
CLARA B. CONGDON. [SEAL.]

Signed, sealed and delivered in presence of:
F. A. GARRETT.
CHARLES S. BENNETT.

STATE OF MINNESOTA, *County of Ramsey, ss:*

On this 27th day of May A. D. 1890 before me personally appeared Chester A. Congdon & Clara B. Congdon, his wife to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed signed & sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

[SEAL N. P.] CHARLES S. BENNETT,
Notary Public, Ramsey County, Minnesota.

Filed for record June 4th, 1890 at 3 P. M. request Chester A. Congdon.

MATT BARTHOLET,
Co. Auditor,
By M. A. SCHANNO, *Deputy.*

88 Office of the Auditor of Yakima County, State of Washington.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, W. B. Newcomb, County Auditor for the County of Yakima, State of Washington, do hereby certify that the within and foregoing instrument in writing is a full, true and correct copy of a Quit Claim Deed, filed for record in this office on the 4th day of June A. D. 1890, at 3 P. M. and recorded in Vol. L page 516 Deeds records of Yakima County, as appears from the record of said instrument now in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18" day of Dec. A. D. 1905.

[COUNTY AUDITOR SEAL.] W. B. NEWCOMB,
County Auditor for the County of Yakima, State of Washington,
By R. R. FERRIS, *Deputy.*

Endorsed: 39562. Quit Claim Deed. Chester A. Congdon, *et ux,* to The Ontario Land Co.

(Here follow maps marked pp. 89 & 90.)

MAPS

TOO

LARGE

FOR

FILMING

91 PLAINTIFF'S EXHIBIT 7.

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON, A. F. SWITZER, MAGGIE N. MILLER, SARAH CALGGETT, MRS. AMELIA HAMEL, NEEDHAM & MASTERS, ONTARIO LAND CO., Defendants.

Application for Judgment Foreclosing Tax Lien.

To the Hon. Frank H. Rudkin, Judge of the said Superior Court:

Yakima County, plaintiff in the foregoing entitled action, by Wm. B. Dudley its Treasurer and legal representative, respectfully relates as follows:

That it is the holder of Certificate of Delinquency issued on the 31st day of January, A. D. 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon, upon real property situate in said county, assessed to the defendants herein for the years and in the amounts hereinafter stated.

That no redemption of said property has been made, and there is now due plaintiff herein on said certificate of delinquency, the amounts set forth below following each description, marked "total":

.....

.....

1851, Capit'l Add. to North Yakima, All of block 352, taxes for 1892-'3, amounting to $45.35, interest $31.29, costs $.10, total $76.74, assessed to Unknown Owner.....

1912, Capit'l Add. to North Yakima, All of block 372, taxes for 1892-'3, amounting to $45.37, interest $31.30, costs $.10, total $76.77, assessed to Unknown Owner.

.....

92 All of said lands, described as being in some City, or addition thereto, being — accordance with official plat of said City, or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and all of the above described lands being situate in township and range north and east of the Willamette Meridian.

.....

.....

Wherefore, plaintiff asks that its lien against said property be foreclosed and that judgment be given plaintiff against each piece, parcel or tract of land hereinbefore mentioned, for the amount set opposite thereto, together with costs and disbursements.

WM. B. DUDLEY, *Treasurer.*

STATE OF WASHINGTON, *County of Yakima, ss:*

Wm. B. Dudley, being first duly sworn, on oath says: That he is the Treasurer of Yakima County, Washington, and the legal representative of the plaintiff in the above entitled action; that he has read the foregoing, knows the contents thereof and believes the same to be true.

WM. B. DUDLEY.

Subscribed and sworn to before me this 2nd day of August, 1902.

[Superior Court Seal.]

J. W. DAY,
Deputy County Clerk and ex-Officio Clerk of said Superior Court.

93 STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. W. Day, County Clerk and *ex-officio* Clerk of the Superior Court of Yakima County, State of Washington, do hereby certify that the above and foregoing is a true and correct copy of the original application for judgment foreclosing tax lien and of the filing marks thereon in the foregoing entitled action as the same now appears on file in my office, excepting that the names of a large number of defendants and a large number of descriptions of land, contained in said original are omitted from said copy.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at North Yakima, this 28th. day of April, A. D. 1906.

[Superior Court Seal.]

J. W. DAY,
County Clerk and ex-Officio Clerk of said Superior Court.

Endorsed: No. 64. In the Superior Court of Yakima County, State of Washington. Yakima County, State of Washington, Plaintiff, *vs.* Edward Whitson, *et al.*, Defendants. Application for Judgment. Filed Sept. 2nd. 1902, G. L. Allen, County Clerk, By J. W. Day, Deputy.

94 PLAINTIFF'S EXHIBIT 8.

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,
vs.
EDWARD WHITSON, A. F. SWITZER, MAGGIE N. MILLER, SARAH CLAGGETT, MRS. AMELIA HAMEL, NEEDHAM & MASTERS, ONTARIO LAND COMPANY, Defendants.

Summons for Publication in Foreclosure of Tax Lien.

The State of Washington to Edward Whitson, A. F. Switzer, Maggie N. Miller,.....and all persons unknown having, or claiming to have, an interest in and to real property hereinafter described:

You and each of you are hereby notified that the County of Yakima, State of Washington, the plaintiff herein, is the holder of Certificate of Delinquency issued on the 31st day of January, 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with the penalty, interest and costs thereon upon real property situate in said County, assessed to the defendants herein for the years and amount hereinafter stated:.....

No.	C/D.	Description.	Sec. or lot.	Tp. or block.	Years.	Assessed to—	Amount.
1664	Capitol Ad.	N. Yakima	9	312	1892-3-4-5	Carrie M. Reed..	10.33
1665	" "	" "	10	312	1892-3-4-5	" " " ..	10.33
1666	" "	" "	11	312	1892-3-4-5	" " " ..	22.64
1716	" "	" "	Fr. 1	316	1894	Unknown Owner.	.27
1717	" "	" "	Fr. 2	316	1894	" " .	.27
1737	Ker's Second Ad. to North Yakima.		8	330	1891-2-3-4-5	" " .	9.02
1851	" "	" "	All of	352	1892-3	Unknown Owner.	45.35
1852	" "	" "	All of	353	1892-3	Unknown Owner.	45.37
1912	" "	" "	All of	372	1892-3	Unknown Owner.	45.37

.....

95 All of said lands described as being in some city, or addition thereto, being in accordance with the official plat of said city, or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington; and all of the above described lands being situated in Township and Range North and East on the Willamette Meridian.

All of the said amounts bearing interest at the rate of fifteen per cent. per annum from said 31st day of January, 1898, until paid; and you are further notified that the said County of Yakima will apply to the Superior Court of the State of Washington, in and for said County, for a judgment foreclosure its lien against the property

hereinbefore mentioned; and you are hereby summoned to appear within sixty days after the first publication of this summons, exclusive of the first day of publication, towit, within sixty days after the 1st day of November, 1901, and defend this action or pay the amount due, together with costs; and in case of your failure so to do, judgment will be rendered foreclosing the lien for said Certificate of Delinquency, penalty, interest and costs, against the lands and premises hereinbefore mentioned.

Any pleading or process may be served upon the undersigned at the address hereinafter stated.

W. P. GUTHRIE,
Prosecuting Att'y for Yakima County,
Washington, Plaintiff's Att'y.

P. O. Address, North Yakima, Yakima County, Washington.

96 STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. W. Day, County Clerk and *ex-Officio* Clerk of the Superior Court of Yakima County, State of Washington, do hereby certify that the above and foregoing is a true and correct copy of the original summons for publication in foreclosure of tax lien in the foregoing entitled action as the same now appears on file in my office, and of the file marks thereon, except that there are omitted from said copy a large number of names of defendants and of descriptions of land contained in said original.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at North Yakima, this 28th day of April, A. D. 1906.

[Superior Court Seal.]

J. W. DAY,
County Clerk and Ex-officio Clerk of said Superior Court.

Endorsed: No. 64. In the Superior Court of the State of Washington for Yakima County. Yakima County State of Washington, Plaintiff, *vs.* Edward Whitson, *et al.*, Defendants. Summons for Publication in Foreclosure of Tax Lien. Filed Jan. 3, 1902. G. L. Allen, County Clerk, J. W. Day, Deputy.

97 PLAINTIFF'S EXHIBIT 9.

Summons for Publication in Foreclosure of Tax Lien.

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,
vs.
EDWARD WHITSON, A. F. SWITZER,.....
.....
.....
ONTARIO LAND COMPANY,.....
.....
.....
and All Persons Unknown, Having or Claiming to Have, an Interest in and to the Real Property Hereinafter Described:

You and each of you are hereby notified that the County of Yakima, State of Washington, the plaintiff herein is the holder of certificate of delinquency issued on the 31st day of January, 1898, by Yakima County, State of Washington, the same being for taxes then due and delinquent, together with penalty, interest and costs thereon upon real property situate in said County, assessed to the defendants herein for the years and the amount hereinafter stated:..

.....
1851—Capitol Add'n Yakima, all of b 352, 1892-'3, unknown owner $45.37
.....
1912—Capitol Add'n Yakima, all of b 372, 1892-'3, unknown owner $45.37
.....
.....

All of said lands described as being in some city or addition thereto, being in accordance with the official plat of said city or addition thereto on file and of record in the office of the County Auditor of Yakima County, Washington, and all of the above described land being situate in township and range North and East of the Willamette Meridian. All of said amounts bearing interest at the rate of fifteen per cent. per annum from said 31st day of January, 1898, until paid; and you are further notified that the said County of Yakima will apply to the superior court of the State of Washington, in and for said county for a judgment fore-
98 closing its lien against the property hereinbefore mentioned; and you are hereby summoned to appear within sixty days after the first publication of this summons exclusive of the first day of Publication, towit, within sixty days after the first day of November, 1901, and defend this action or pay the amount due together with costs; and in case of your failure so to do judgment will be rendered foreclosing the lien for said certificate of delinquency,

penalty, interest and costs, against the land, and premises hereinbefore mentioned.

Any pleading or process may be served upon the undersigned at the address hereinafter stated.

W. P. GUTHRIE,
Plaintiff's Attorney.

P. O. address, North Yakima, Yakima County, Washington.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. W. Day, County Clerk and *ex-Officio* Clerk of the Superior Court of Yakima County, State of Washington, do hereby certify that the above and foregoing is a true and correct copy of the original summons for foreclosure of tax lien and of the affidavit of publication thereof and of the file marks thereon in the foregoing entitled action as the same now appears on file in my office.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at North Yakima, this 28th. day of April A. D. 1906.

[Superior Court Seal.]

J. W. DAY,
County Clerk and ex-Officio Clerk of said Superior Court.

99 *Affidavit of Publication.*

STATE OF WASHINGTON, *County of Yakima, ss:*

I, W. W. Robertson, being first duly sworn on oath, depose and say: I am Editor and Publisher of the Yakima Republic a weekly newspaper, published at North Yakima, in said county and state, and of general circulation in said county and state; that the notice hereunto appended; which is a summons by publication in foreclosure of tax lien, was printed and published in said newspaper for seven successive weeks, as follows:

First publication Friday November 1, 1901.
Second publication Friday November 8, 1901.
Third publication Friday November 15, 1901.
Fourth publication Friday November 22, 1901.
Fifth publication Friday November 29, 1901.
Sixth publication Friday December 6, 1901.
Seventh publication Friday December 13, 1901.

And that said notice was published in said newspaper and not in a supplement, each and all of the times above mentioned.

W. W. ROBERTSON.

Subscribed and sworn to before me this 23d day of July, 1902.

[NOTARIAL SEAL.] W. P. GUTHRIE,
Notary Public in and for the State of Washington, Residing at North Yakima, Washington.

Endorsed: Filed July 23rd, 1902. G. L. Allen, County Clerk. J. W. Day, Deputy.

100 DEFENDANT'S EXHIBIT A.

In the Superior Court of the State of Washington for Yakima County.

YAKIMA COUNTY, STATE OF WASHINGTON, Plaintiff,

vs.

EDWARD WHITSON, A. F. SWITZER, ONTARIO LAND COMPANY ET AL., and All Other Persons Unknown, if Any, Having or Claiming to Have an Interest in and to the Real Property Hereinafter Described, Defendants.

Judgment in Foreclosure of Tax Lien and Order of Sale.

This cause having this 2nd day of September, 1902, been brought to be heard upon the application for judgment foreclosing tax lien filed herein, and the defendants and each of them having been duly served with notice as by law required, and no appearance having been made by said defendants, or either of them, and upon the proofs adduced, it appearing to the Court that the statements and allegations set forth in said application are true, the Court finds as follows:

That the plaintiff herein is the owner and holder of Certificate of Delinquency issued on the 31st day of January, 1898, by the County of Yakima, State of Washington, the same being for taxes then due and delinquent, together with penalty interest and costs thereon, upon real property situate in said County, assessed to the defendants herein for the years and in the amount hereinafter stated.

That more than five years have elapsed since the original date of delinquency of the taxes for the year 1895, which are included in said certificate of delinquency.

That there is now due plaintiff herein for said Certificate
101 of Delinquency, and for penalty, interest and costs thereon, upon each piece, parcel or tract hereinafter described, the amount set opposite thereto.

That plaintiff herein has a good and lawful lien against each and every tract, piece and parcel of land hereinafter described for the amount set opposite thereto.

That summons and notice has been duly served in this proceeding as required by the Statute of this State and such statute complied with in all other respects pertaining thereto.

It is therefore adjudged, ordered and decreed, that plaintiff herein be given judgment against the property hereinafter described, for the amount of plaintiff's lien, together with interest, costs and disbursements, which said judgment shall be a several judgment against each tract or lot, or part of a tract or lot of land, hereinafter mentioned, in the amounts set opposite thereto.

1851, Capit'l Add. to North Yakima, all of block 352, taxes for 1892-3, amounting to $45.35, interest $31.29, costs $.10, total $76.74, assessed to Unknown Owner.

1912, Capit'l Add. to North Yakima, All of block 372, taxes for 1892-3 amounting to $45.37, interest $31.30, costs $.10, total $76.77, assessed to Unknown Owner, and other property.

All of said lands described as being in some city, or addition thereto, being in accordance with official plat of said city, or addition thereto, on file and of record in the office of the County Auditor of Yakima County, Washington: and all of the above described lands being situate in township and range north and east of the Willamette Meridian.

Now, therefore, in the name of the State of Washington:

You, Wm. B. Dudley, County Treasurer in and for said County, or your successor in office, are hereby ordered and directed to sell according to law, the premises hereinbefore mentioned, together with the appurtenances thereunto belonging, or so much thereof
102 as may be necessary to satisfy the judgment herein, together with interest, costs and accruing costs thereon.

FRANK H. RUDKIN.

G. L. ALLEN,
County Clerk and Clerk of the Superior Court,
By J. W. DAY, *Deputy.*

STATE OF WASHINGTON, *County of Yakima, ss:*

I, G. L. Allen, County Clerk and Clerk of the Superior Court, in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the Judgment in Foreclosure of Tax Lien and Order of Sale, in the above entitled cause, as the same appears on record in my office.

In witness whereof, I have hereunto set my hand and seal of said Court affixed, this — day of September, 1902.

—— ——,
County Clerk and Clerk of the Superior Court,
By —— ——, *Deputy.*

STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. D. Day, County Clerk and *ex-Officio* Clerk of the Superior Court of Yakima County, State of Washington, do hereby certify that the above and foregoing is a true and correct copy of the original judgment in foreclosure of tax lien in the foregoing entitled action as the same now appears on record in my office, on page 520 of Journal Vol. 1 excepting a large number of names of defendants and of descriptions of land contained in said original.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at North Yakima, this 30 day of April, A. D. 1906.

[Superior Court Seal.]

J. W. DAY,
County Clerk and Ex-officio Clerk of said Superior Court.

Filed for Record Sept. 2nd, 1902. Recorded in Vol. 1 of Tax Journal page 520.

G. L. ALLEN,
County Clerk,
By J. W. DAY, *Deputy.*

103 DEFENDANT'S EXHIBIT B.

STATE OF WASHINGTON, *County of Yakima, ss:*

This indenture made this 2nd day of May, A. D. 1903 between E. G. Peck, as Treasurer of Yakima County, State of Washington, party of the first part, and Jay Yordy party of the second part:

Witnesseth, that, whereas, at a public sale of real estate held on the 2nd day of May, A. D. 1903, pursuant to a real estate tax judgment entered in the Superior Court of the County of Yakima on the 2nd day of September, A. D. 1902, in proceedings to foreclose tax liens upon real estate and an order of sale duly issued by said court, Jay Yordy duly purchased in compliance with the laws of the State of Washington, the following described real estate, to-wit:

All of Blocks Numbered Three Hundred fifty-two (352) and Three Hundred Seventy Two (372) of Capitol Addition to North Yakima Washington, and that said Jay Yordy has complied with the laws of the State of Washington necessary to entitle him to a deed for said real estate.

Now, therefore, know ye, that I, E. G. Peck County Treasurer of said Yakima County, State of Washington, in consideration of the premises and by virtue of the statutes of the State of Washington, in such cases provided, do hereby grant and convey unto Jay Yordy heirs and assigns, forever the said real estate hereinbefore described.

Given under my hand and seal of office this 2nd day of May, A. D. 1903.

[SEAL.]

E. G. PECK,
County Treasurer.

Endorsed: Indexed and Compared May 6, 1903. By W. H. S. A. F. D. 18342. No. 90. Tax Deed from E. G. Peck, County Treasurer, Yakima County, to Jay Yordy. Filed for record at the request of Jay Yordy May 2, A. D. 1903, at 30 min. past 9 A. M., and recorded in Vol. 7 of Deeds, page 42, Records of Yakima County, Washington. W. B. Newcomb County Auditor. [Seal.]

104 In the Superior Court of the State of Washington in and for the County of Yakima.

THE ONTARIO LAND COMPANY, Plaintiff,
vs.
J. E. YORDY and —— YORDY, His Wife, Defendants.

Certificate.

STATE OF WASHINGTON, *County of Yakima, ss:*

This is to certify, that the foregoing is a true and correct transcript and statement of facts of all the testimony and proceedings had and produced at the trial of said cause; that the same has been prepared by the defendants in the above cause and served on the plaintiffs therein as by the laws of the state of Washington made and provided; that the attorneys for the plaintiff and the defendants in said cause have, by a written stipulation stipulated and agreed that the foregoing and within be certified upon the presentation of said stipulation as a true and correct transcript of the testimony and proceedings had and held in said cause, and that the exhibits attached to said statement are true and correct copies of the originals introduced in evidence except that the tax deed introduced in evidence by said defendants is the original tax deed introduced in evidence in said cause. Said exhibits being referred to in said statement and are hereby certified as a part of said statement of facts. That said tax deed and all the instruments of which said other exhibits are copies were received in evidence on the trial of said action.

Dated this 30th day of April, 1906.

H. B. RIGG, *Judge.*

Endorsed: In the Supreme Court of the State of Washington. The Ontario Land Co. *v.* J. E. Yordy *et al.*, Statement of Facts. Filed May 1, 1906. J. W. Day, County Clerk.

105 Filed Oct. 27th, 1906.

No. 6233.

ONTARIO LAND COMPANY, Respondent,
v.
JAY YORDY ET AL., Appellants.

This action was instituted by the plaintiff, the Ontario Land Company, against the defendants Jay Yordy and Minnie E. Yordy, his wife, to recover possession of certain city lots in North Yakima. It appears that the plaintiff's grantors, Chester A. Congdon and Clara B. Congdon, being owners of the east half of the southwest quarter and the west half of the southeast quarter of section 24, in

township 13, north of range 18, E., W. M., except ten acres belonging to one Charles M. Holton, platted the same on May 16, 1889, as Capital Addition to North Yakima; that the entire tract above described was apparently platted, with the exception of the Holton ten acres; that through the central portion of the plat, which included a certain body of land marked "Reserved," and hereinafter mentioned, the blocks were consecutively numbered; that where blocks numbered 352, 353, 372 and 373 would have ordinarily appeared, a rectangular tract was shown, marked "Reserved," the same being of sufficient size to include four ordinary blocks; that no explanation was afforded, either by the dedication or upon the plat, as to what was meant by the term "Reserved," nor was the use to which said tract was to be applied declared; that the assessor of Yakima county listed and appraised for taxation what he described as blocks 352 and 372 in Capital Addition to North Yakima Wash., and the same were taxed for the years 1892, 1893, 1894 and 1895; that all taxes for these years became delinquent; that the county foreclosed the same on blocks 352 and 372 of Capital Addition to North Yakima; that under the foreclosure decree, a tax deed was afterwards issued to the defendant Jay Yordy; that he afterwards paid all subsequent taxes levied thereon; that on May 24, 1890, after the said Congdon and wife had platted Capital Addition, they deeded all of the land therein included to the plaintiff, the Ontario Land Company,
106 but that instead of describing the same by lots and blocks, they conveyed it as the west half of the southeast quarter and the east half of the southwest quarter of section 24, township 13, north of range 18, E., W. M., excepting therefrom the Holton tract; that in the deed from Congdon and wife to the plaintiff, no allusion whatever was made to Capital Addition to North Yakima; that on September 22, 1904, after the tax deed above mentioned had been executed and delivered to the defendant Yordy, and had been recorded, the plaintiff, the Ontario Land Company, platted that portion of Capital Addition marked "Reserved," as "Heerman's Addition to North Yakima," subdividing said reserved tract into four blocks numbered from 1 to 4 inclusive, each block being subdivided into sixteen lots; that Yordy had then taken possession of a portion of the tract marked "Reserved," claiming the same under his tax deed, and that afterwards the plaintiff, the Ontario Land Company, instituted this action to eject him from certain lots which it described in its complaint as being in blocks 1 and 2 of Heerman's Addition, making no reference whatever to Capital Addition or any part thereof. The trial court, after making its findings of fact and conclusions of law, entered a decree in favor of plaintiff, awarding it possession, and the defendants have appealed.

The appellants contend that they are entitled under the tax deed to that portion of the land marked "Reserved," which would, by the consecutive system of numbering used in said original Capital Addition plat, have constituted blocks 352 and 372; while the respondent insists that it has instituted this action to recover the possession of certain lots in Heerman's Addition to North Yakima, not included in the appellant's tax deed; that the tax deed in no way describes

nor does it identify any land included either in Capital Addition or Heerman's Addition. The main issue in this case therefore is whether the description of the land as blocks 352 and 372 of Capital Addition to North Yakima is sufficient in law to give validity to the deed. The evidence shows that the respondent had actual
107 notice and knowledge of the fact that an attempt had been made to levy a tax upon that portion of its property marked "Reserved," and that it not only denied the validity of such taxes, in interviews with two county treasurers, who called its attention to the same, but also stood quietly by, during the foreclosure proceedings and tax sale, and with full knowledge of the same permitted the appellant Yordy to make his purchase without its taking or making any protest, and that it thereafter platted the reserved tract as Heerman's Addition to North Yakima. It is a well established principle of law that a description in a deed or other instrument affecting title to real estate is sufficient if it affords an intelligent means for identifying the property, and does not mislead. In other words, if a person of ordinary intelligence and understanding can successfully use the description in an attempt to locate and identify the particular property sought to be conveyed, the description answers its purpose and must be held sufficient. Mr. Jones, at section 323 of his treatise on the Law of Real Property in Conveyancing, says:

"The first requisite of an adequate description is that the land shall be identified with reasonable certainty, but the degree of certainty required is always qualified by the application of the rule that that is certain which can be made certain. A deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it was intended to convey. The office of a description is not to identify the land, but to furnish the means of identification. The description will be liberally construed to afford the basis of a valid grant. It is only when it remains a matter of conjecture what property was intended to be conveyed, after resorting to such extrinsic evidence as is admissible, that the deed will be held void for uncertainty in the description of parcels."

When real estate is listed and assessed for taxation, it is ordinarily necessary that the assessment roll shall contain a reasonably accurate description of the tract sought to be taxed. The object of this requirement is stated by writers on taxation and tax titles to be threefold, (1) it is designed to inform the owner of the claim upon his property; (2) it is designed that intending purchasers may know what property will be offered for sale in the event of the taxes becoming delinquent, and (3) it is also the intention that under such description a proper deed may be executed to the purchaser.

Cooley on Taxation (2d Ed.) p. 405.
Black on Tax Titles (2d ed.) § 112.

108 The respondent had paid no taxes on the reserved tract for the years included in the foreclosure proceedings, nor does it claim to have done so. The tract was concededly private property

subject to taxation. The owner must have known that, under ordinary procedure it would be assessed under some description. It fails, however, to show any effort upon its part or any desire to learn how or under what description any levy of taxes had been made. The blocks in Capital Addition were numbered in such a manner as to indicate that blocks 352 and 372 would be located on a particular portion of the reserved tract, if such blocks could be construed to exist. The entire plat fails to show any place for block numbers 352 and 372, so omitted except upon the reserved tract. This tract was in the exact location where such numbers would occur in the regular and consecutive course and system of numbers employed in the plat. There is evidence tending to show that for some time prior to the year 1892, this tract was used as a park by the city of North Yakima; that during said period it was not taxed; but that it was afterwards abandoned by the city. It then became the imperative duty of the county assessor to list it for taxation. He was compelled to do this under some description, so he designated the portion afterwards purchased by the appellant Yordy as blocks 352 and 372 of Capital Addition to North Yakima. Under all the circums-ances, we think this a sufficient description to identify the property and support the assessment, levy, foreclosure, and tax deed. No person of ordinary intelligence could fail to correctly identify the property intended to be taxed, and afterwards conveyed, and the respondent could not destroy the sufficiency of the description used, or render it ambiguous by bringing into existence a subsequent and inconsistent description when platting the reserved tract under another name. The entire course of the respondent would seem to have been adopted with a premeditated intention to evade the payment of any taxes whatever upon the reserved tract, although at the time it knew the same was liable to taxation, and no court of justice should adopt any strained rule of construction the result of which would be to
109 aid it in any such enterprise. It could have avoided any threatened cloud on its title or loss of its property by paying the taxes of which it had actual knowledge and for the payment of which it knew it was justly liable. The respondent has undertaken to attack the validity of the foreclosure proceedings, doing so in response to the claims of title pleaded in appellants' answer. We do not think it can do so in this action as it has not tendered the delinquent taxes as required by § 5678, Bal.

Ward *v.* Huggins, 16 Wash. 530.
Merritt *v.* Corey, 22 Wash. 444.

The judgment of the superior court is reversed and the cause is remanded with instructions to enter a decree quieting the title of the appellants.

CROW, *J.*

We concur:
MOUNT, *C. J.*
ROOT, *J.*
FULLERTON, *J.*
HADLEY, *J.*
DUNBAR, *J.*

110 In the Supreme Court of the State of Washington.

TUESDAY, *January* 8, 1907.

No. 6233.

THE ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY ET AL., Appellants.

Judgment.

This cause having been heretofore submitted to the Court, upon the transcript of the record of the superior court of Yakima county, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, and having filed its opinion in writing, it is now, on this 8th day of January, A. D. 1907, on motion of Ira P. Englehart Esquire, of counsel for appellant, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby reversed with costs; the petition for rehearing denied and that the said Jay Yordy *et al.* have and recover of and from the said The Ontario Land Co. the costs of this action taxed and allowed at Seventy-five & 75/100 Dollars, and that execution issue therefore. And it is further ordered, that this cause be remitted to the said Supreme Court for further proceedings, in accordance with the opinion herein filed.

111 STATE OF WASHINGTON:

In the Supreme Court.

ONTARIO LAND COMPANY, Plaintiff and Respondent,
vs.
JAY YORDY and MINNIE E. YORDY, His Wife, Defendants and Appellants.

Petition for Writ of Error.

To the Honorable Hiram E. Hadley, chief justice of the Supreme Court of the State of Washington:

The petition of the Ontario Land Company respectfully represents, that it is a corporation duly organized and doing business under the laws of the State of Minnesota; that on or about the 8th day of January, A. D. 1907, there was entered in and by the Supreme Court of the State of Washington, the same being the highest court of said state, a final judgment in a certain case therein pending between the said Ontario Land Company, respondent, in the supreme court of the State of Washington (plaintiff in the Superior Court, the court of original jurisdiction in said state), and Jay Yordy and Minnie E. Yordy, his wife, appellants in said Supreme Court of

Washington, and defendants in said Superior Court), said judgment being in favor of the said appellants, Yordy, and in reversal of a judgment previously rendered by said State Superior Court in favor of this petitioner, whereby and by the terms of which said Judgment of reversal the judgment of the lower court was reversed and "the case remanded with instructions to enter a decree quieting title of the appellants." That in said judgment of said Supreme Court of Washington, certain errors were committed to the prejudice of this plaintiff, respondent in said Supreme Court, all of which will more fully appear from the Assignment of Errors, herewith submitted and filed, and from the transcript of the record on file in said
112 cause. That in said cause there was drawn in question the validity of an authority exercised under the laws of the State of Washington, on the ground of it being repugnant to the constitution of the United States, and the decision of the said Supreme Court of Washington was in favor of the validity of said authority.

Therefore this plaintiff (respondent in the said Supreme Court of the State of Washington) prays that a writ of error may issue in this behalf to the said Supreme Court of the State of Washington for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

ONTARIO LAND COMPANY, *Petitioner,*
By E. B. PREBLE,
Attorney for Said Ontario Land Co.,
Plaintiff and Respondent.

February 13th, 1907.

113 Supreme Court of the United States.

ONTARIO LAND COMPANY, Plaintiff in Error,
vs.
JAY YORDY and MINNIE E. YORDY, His Wife, Defendants in Error.

Order Allowing Writ of Error.

Upon reading and filing the foregoing Petition for Writ of Error and the assignment of errors therewith submitted it is ordered that the writ of error prayed for is hereby allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein, and the amount of bond on said writ of error be and hereby is fixed at the sum of $2500.00.

HIRAM E. HADLEY,
Chief Justice of the Supreme Court
of the State of Washington.

Dated February 13th, 1907.

Endorsed: 6233. Ontario Land Company, Respondent, *vs.* Jay Yordy, *et al.*, appellant. Order allowing Writ of Error, and Petition for Writ of Error. Filed Feb. 14, 1907. C. S. Reinhart, Clerk.

114 STATE OF WASHINGTON:

In the Supreme Court.

ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY and MINNIE E. YORDY, His Wife, Appellants.

Assignment of Errors.

Ontario Land Company, the respondent in the above entitled cause, in connection with its petition for a writ of error herewith submitted, makes the following assignment of errors, which it avers occurred upon the hearing of said cause in this Court, to-wit:—

1. The court erred in holding that the tax summons or notice, the tax judgment and the tax deed based thereon were sufficient and valid to divest the title of said respondent Ontario Land Company.

2. The court erred in holding that the tax summons or notice, the tax judgment and the tax deed based thereon were not repugnant to the Fourteenth Amendment of the Constitution of the United States, and especially that part thereof which provides that "no state shall deprive any person of his property without due process of law."

3. The court erred in holding that the description of the land in the tax proceedings, and especially in the tax notice and summons, was sufficient to constitute notice under the provisions of the Fourteenth Amendment above mentioned, and was not repugnant thereto.

4. The court erred in holding that the tax judgment and tax deed based thereon did not deprive respondent of its property without "due process of law," in violation of said Fourteenth Amendment.

115 5. The court erred in its conclusion of law that the description of the property sought to be taken for the tax "is a sufficient description to identify the property and support assessment, levy foreclosure and tax deed" within the requirement of the Fourteenth Amendment.

6. The court erred in holding that the respondent could not attack the validity of the foreclosure proceedings because it had not tendered the delinquent taxes as required by Section 5678 of the Ballinger Code.

7. The Court erred in reversing the judgment of the Superior Court.

8. The court erred in remanding the cause with instructions to enter a decree quieting the title of the appellants.

9. The court erred in denying or refusing to hear the motion of the respondent to modify its order of reversal.

10. The court erred in this, that by its judgment of reversal with instructions to enter decree quieting title of the appellants, it has denied this respondent a hearing on the question of the validity of the tax foreclosure proceedings, the validity of which according to court's holding, was not at issue and could not be at issue because

of failure of plaintiff to tender the delinquent taxes, before bringing the action to recover said property.

11. The court erred in its judgment quieting title of the appellants, since the effect of its judgment in so doing, is to deprive the respondent of its property without a hearing as to the validity of said tax title, and in violation of the "due process of law" clause of the Federal Constitution.

12. The court erred in upholding the tax judgment and tax deed for the following reasons:

(*a*) To give the effect as given by the court to the tax proceedings, tax judgment and tax deed of divesting the title of the respondent, is to deprive the respondent of its property, without "due process of law," in violation of Articles Fourteen of the Federal Consti-
116 tution, and especially of that part of said Article which provides that "no state shall deprive any person of his property without due process of law."

(*b*) Because, in order to constitute proper notice under said Fourteenth Amendment in tax proceedings *in rem*, the description of the property sought to be sold for taxes, must be so full and clear as to disclose to persons of ordinary intelligence what property is intended to be taken, whereas, the description of the property sought to be taken by the tax proceedings here is wholly unintelligible and void on its face.

(*c*) Because to give effect to the judgment of reversal of the Supreme Court of the State of Washington is to uphold the tax judgment and tax deed and vest the title in the appellant, without giving a hearing or day in court to the respondent on the question of the validity of the tax judgment, irrespective of the sufficiency of the description of the land sought to be taken, and therefore, in violation of the "due process of law" clause aforesaid.

13. The court erred in denying respondent's Petition for reargument upon the 5th ground therein contained, to-wit: That to give effect to the Tax Summons, Judgment and Deed as given by the Court is to deprive the respondent of its property without due process of law for the reasons stated in said 5th ground for re-hearing; and said Court erred in denying said Petition for re-hearing especially for the reasons stated in said 5th ground for re-hearing.

ONTARIO LAND COMPANY,
By E. B. PREBLE,
Attorney for said Respondent.

Dated this 13th day of February, A. D. 1907.

A. L. AGATIN,
Of Counsel.

Endorsed: 6233. In the Supreme Court of the State of Washington. Ontario Land Company, Respondent, *vs.* Jay Yordy, *et al.*, Appellants. Assignments of Error. Filed Feb. 14, 1907. C. S. Reinhart, Clerk.

117 STATE OF WASHINGTON:

In the Supreme Court.

THE ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY ET AL., Appellants.

Petition for Reargument.

To the Honorable Judges of the Supreme Court of the State of Washington:

The above named respondent, The Ontario Land Company, respectfully petitions this honorable court for a re-hearing and reargument of this case, upon the following grounds, to-wit:

First.

That the decision of the Court in this case is of far-reaching importance, and if adhered to, will affect a large number of innocent persons, not parties to this action, who will necessarily suffer great loss and damage, if the principles laid down are adhered to. It being a fact, as will more fully appear from the affidavit of Chester A. Congdon, hereto attached and made a part of this petition, that all of the tract of land marked "Reserved" upon the plat of Capitol Addition, referred to in the Court's decision, and now platted as Heerman's Addition to North Yakima, is affected by tax deeds like the one in the case at bar, and that over fifty lots in said Heerman's Addition have been sold, and at least, seventeen of which have been conveyed by this respondent to several individuals, all residents of the City of North Yakima, for actual residences or actual investments. That the number of the individuals so affected exceeds thirty. That the tax judgment involved in this case includes blocks numbered 372, 373, 352 and 353 of Capitol Addition to North Yakima, which, according to the principles laid down in the decision,
118 would cover the whole of said reserved tract, and that tax deeds have been issued for all of said blocks to parties claiming adversely to the grantees aforesaid of this respondent. That all of the lots of land in said Heerman's Addition, sold and conveyed as aforesaid, are therefore affected by the tax titles in the same way as the property involved in this case, and that said lots of land have been purchased by innocent parties relying upon advice of counsel learned in the law as to the invalidity of said tax titles, and in the belief in good faith, that such counsel was wisely given.

That the market value of said lots has very substantially increased, since their sale and conveyance by respondent, as aforesaid; and that some of said lots have been improved by the erection of homes by said grantees, and the decision of this Court, if adhered to, will deprive them of their improvements and betterments, as well as of the title to said lots, acquired by them as aforesaid in the belief, in good faith, of the invalidity of said tax titles.

That the decision of this Court will enable the tax title holders to harass and oppress the individual lot holders, aforesaid, by threats of litigation and demands of extortionate prices for quit-claim deeds, and will necessarily give rise to and encourage vexations and oppressive litigation, the result of which must of necessity cause extreme hardship and suffering.

That the litigation thus likely to ensue, must, if the decision is adhered to, end adversely to the lot owners aforesaid, and subject them severally to great injury, loss, damages and expense, and remand them to the inadequate remedy of action for damages for breach of covenants of title, the measure of damages in which would merely give them the right to recover the price originally paid with interest, and deprive them of the accrued value of said lots since said purchases, and the betterments and improvements thereon.

That the annexed affidavit of Chester A. Congdon, Vice President of this respondent, contains a true statement of the names and residences of the parties thus to be affected, together with a description of the lots conveyed or agreed to be conveyed to
119 them respectively, with a statement of price paid by them respectively, and the present market value thereof.

That before the decision of this Court should inevitably become the cause of the results necessarily likely to occur, as above outlined, the first principles of common justice demand that this Court grant a re-hearing of the case, if it can be shown that the decision in this case resulted in clearly mistaken application of the law to the facts of the case.

Second.

Respondent asks a re-hearing upon the further ground that in holding that the respondent could not attack validity of tax foreclosure, because it did not tender the delinquent taxes, the Court has overlooked a new Statute of this State passed March 16th, 1903, and found in the Laws of 1903, on page 262, (2 Bal. Code Sec. 5511*a*) the object of which was to change the law of this State as announced in Ward *vs.* Huggins and Merritt *vs.* Corey, 22 Wash. 444, (referred to in Court's opinion) and the Statute of 1903, expressly repeals Sections 5678 to 5680 in so far as they have been construed to apply to actions of ejectment.

That it can be demonstrated upon a re-hearing that the Court made an unintentional mistake in assuming that the rule in Ward *vs.* Huggins applies here, and that such mistake resulted from a failure to direct the Court's attention to the Act of 1903, p. 262, which is now the law governing this question, and which repeals the former. That upon a mature consideration of the Law of 1903, in the light of such aid as may be presented by counsel for respective parties, it can be demonstrated that the Court's holding here is unintentionally opposed to the will of the legislatures, as expressed in said Act of 1903, and that by the Law of 1903, it is incumbent upon the defendant in possession to plead in his answer, by way of counterclaim, the amount of taxes paid by him, which must be allowed in the judgment against the plaintiff,—and it is not therefore incumbent on plaintiff to make any tender of taxes. That the holding by

this Court to the contrary, unintentional and overlooking the
120 change made by statute as aforesaid, could not have been anticipated by respondent, since the trial court held the tax deed did not apply to this property, and, therefore, could not have been foreseen by counsel in time to direct Court's attention to the new statute. That in view of the change of law, as aforesaid, the Court will be bound to overrule its decision in this case, when the question arises in the future in another case, and in justice and right, it ought to set itself right in this case in conformity to the will of the legislature and should therefore, grant a re-hearing of this question, so as to allow the respondent a right to attack the validity of the tax title upon any well founded ground.

Third.

The respondent asks for a re-hearing upon the further ground that the Court having overlooked the repealing Act of 1903, above referred to, erroneously decided that respondent could not attack the validity of the tax title, and that upon a re-hearing or upon a new trial, it could be shown that, even if the description in question is sufficient, the tax title is void, because:—

1st. The tax judgment is entered for an amount largely in excess of the taxes, interest and costs, as advertised, and is therefore unauthorized by law and void.

2nd. The tax sale is void because the treasurer sold Block 352 to Yordy for the sum of $82.11 and Block 372 for the sum of $82.15, each of which sales were for an illegal and unauthorized amount, and in excess of the amount limited by the tax judgment, which adjudged the amount of taxes, interest and costs, as follows: Against Block 352, the sum of $76.74; against Block 372, the sum of $76.77.

3rd. Because certificates of delinquency, the filing of which is a jurisdictional pre-requisite, were never filed as conclusively shown by the record, and therefore the tax judgment entered was
121 void and without jurisdiction.

4th. Because the notice and summons as filed and published require the defendants to answer "within 60 days after *first* publication" instead of "within sixty days after the *date* of the first publication, and was, therefore, misleading and void, and the tax judgment based thereon was also void.

5th. Because of other many defects avoiding said tax sale.

Fourth.

Your petitioner further claims the right to a re-hearing of this case upon the ground that the direction for judgment, quieting title of the applicant, is in violation of the Constitution of the State of Washington, and the Statutes of this State in this:—

1st. That by ordering judgment for appellants, without findings of fact to support it, this Court has in effect, and unintentionally, made findings of fact and thereby invaded the exclusive province of the lower court, in violation of the Constitution of this State, limiting the jurisdiction of this Court to cases of review, and thereby prevents

this respondent from interposing any defense to the tax title, not inconsistent with the opinion of this Court.

2nd. That in ordering affirmative relief to appellant, by "quieting his title," the Court mistakenly and unintentionally exceeded the limits of relief in possessory actions, under the Statutes of the State, which limit the scope of a judgment for defendant to the effect "that plaintiff is not entitled to possession."

3rd. That such relief as was granted was not asked by the appellant in its answer: the prayer therein being merely, "That the action be dismissed," and, therefore, is in excess of relief
122 asked and contrary to the settled law of this Court.

Fifth.

That the judgment of this Court in the above entitled case, holding the tax foreclosure and tax deed therein involved as valid and effectual to divest your petitioner of its title to the lands described in the complaint in this action, deprives your petitioner of its said property, without due process of law, in violation of Article Fourteen, of the Articles of Amendment of the Constitution of the United States, and especially in violation of that part of said article, which provides that "no State shall deprive any person of his property without due process of law," and your petitioner further represents that it hereby claims and relies upon the protection of said provisions of said Fourteenth Amendment of the Federal Constitution, and that the judgment of this Court in this case deprives your petitioner of its right and property, in violation of the provisions of the said Fourteenth Amendment, hereinabove specifically referred to.

That your petitioner claims the right to such re-argument and re-hearing upon the ground that while, as a matter of law and in effect, the judgment of this Court deprives your petitioner of its property without "due process of law," and that such is the necessary effect of the judgment of this Court in this case, yet the legal aspect of the question of "due process of law" has not been discussed by the Court in its opinion, and was evidently overlooked by the Court, although the question was raised by the respondent in its brief, (See page 35 of respondent's Brief) wherein it was specially claimed that to give the force and effect to the tax judgment and tax deed claimed by appellant's counsel, is to divest the respondent of the title to said land, in contravention of the Fourteenth Amendment to the Constitution of the United States, inhibiting the taking of property without "due process of law."

That the reason why the question of "due process of law" has not been fully argued, is because the tax judgment and title in
123 question was by the trial court held absolutely null and void as to lands of respondent, and that the judgment of this Court to the contrary could not have been reasonably anticipated by counsel learned in the law.

That until the adverse decision of this Court, there was no op-

portunity presented to respondent to rely upon or claim the protection of the Fourteenth Amendment, because the trial court held in conformity thereto.

That because of these facts and circumstances, it would be manifestly unjust to deprive this respondent of its title, without giving it opportunity, upon a re-hearing, to fully present the question of "due process of law," which was evidently unintentionally overlooked by the Court, and which becomes important in the case, only because of the present opinion of the Court, which could not have been anticipated by respondent or its counsel, and was a surprise to the respondent in the light of the "law of the land."

That it can be demonstrated upon the rehearing of this case that the judgment of this Court, sustaining the validity of the tax foreclosure and tax deed in this case could not have been made without a palpable violation of the provisions of "due process of law" contained in said Fourteenth Amendment of the Federal Constitution for the following reasons, to-wit:

1st. That by "the law of the land," in order to constitute proper notice under the Fourteenth Amendment aforesaid, in a tax proceeding *in rem*, the description of the property sought to be sold for the tax must be so full and clear as to disclose to persons of ordinary intelligence, without resort to inferences or rules of construction, what property is thus intended to be taken.

2nd. That by the "law of the land," the notice and the summons in the tax foreclosure in this case is null and void, and therefore, the tax deed based thereon, for the reason that the description of the property sought to be taken is not intelligible to persons of ordinary intelligence, of which fact the opinion of the Court in this case is the best evidence since the opinion, upon its face, is based
124 upon certain rules of judicial construction, known only by persons of a high order of legal understanding, and wholly unknown to the masses of the people.

3rd. That a clear mistake of law was made by the Court in holding that the sufficiency of the description in the tax foreclosure judgment and deed may be tested by the rules of liberal construction applicable to conveyances as between individuals, and that it may be demonstrated upon a re-hearing of this case that the doctrine laid down by this Court in this respect is opposed to all principles of American jurisprudence and the "law of the land."

4th. That the decision of the Court resulted from a clear misconception of the purpose and effect of a definite and accurate description in tax proceedings and tax deeds, and that weighty reasons not heretofore presented on the argument can be urged to show that the doctrine laid down in this case is opposed to the "law of the land."

That in support of the several grounds of re-argument aforesaid, this respondent herewith submits its briefs and argument, with citation of the authorities in point.

Wherefore, this respondent prays this Honorable Court to consider this petition and Mr. Congdon's affidavit especially in the light of

the authorities presented in the Brief, and grant a rehearing of this case.

THE ONTARIO LAND COMPANY,
By E. B. PREBLE,
Attorney for Respondent.

Dated November 17th, 1906.

W. W. BILLSON AND
A. L. AGATIN,
Of Counsel.

125 STATE OF WASHINGTON:

In the Supreme Court.

THE ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY ET AL., Appellants.

Affidavit of Chester A. Congdon.

STATE OF MINNESOTA, *County of St. Louis, ss:*

Chester A. Congdon, being first duly sworn, deposes and says, that he is the Vice-President of The Ontario Land Company, the respondent in the above entitled appeal. That he knows of his own knowledge that that certain tract of land marked "Reserved" upon the plat of the Capitol Addition to North Yakima has been platted into lots and blocks, under the name of Heerman's Addition to North Yakima, consisting of four blocks, each containing sixteen lots. That he knows of his own knowledge that the tax judgment involved in the above entitled action, and entitled "Yakima County, State of Washington, Plaintiff *vs.* Edward Whitson, *et al.*, Defendants," and referred to in the pleadings and findings of the court in this case, among other descriptions, contains blocks marked 372, 373, 352 and 353 in Capitol Addition to North Yakima, and that tax deeds have been issued at the same time to parties holding said tax deed adversely to this respondent and its grantees. That said tax deeds contain no other description, or designate the property conveyed thereby, otherwise than as Blocks 372, 373, 352 and 353, Capitol Addition to North Yakima; and that if the principles laid down in the decision in this case are adhered to, every lot and block in said Heerman's Addition shall become subject and be affected by the tax deeds aforesaid.

That the respondent has, since the date of platting of said
126 Heerman's Addition conveyed seventeen lots to several parties, and has contracted to convey forty-seven lots to several other parties, all of whom are residents of the City of North Yakima, and who purchased the same either for actual improvement or as an investment.

That the names of the purchasers as aforesaid, except the purchasers of six lots, together with the description of the lots sold to

them as aforesaid, is shown upon the statement hereto attached and made a part of this affidavit. That the six lots not described in said list have been sold as deponent was orally informed by the Agent of The Ontario Land Company at North Yakima, about four weeks ago, when he was last there.

That he believes that all of said parties purchased said property from this respondent in good faith after securing opinions of counsel learned in the law as to invalidity of said tax titles. That he believes that ever since said deeds have been issued, it was the general opinion of the Bar of North Yakima, that said tax deeds were void, for the reason that they did not describe any property.

That he is familiar with the market value of said lots at the present time, and that he knows of his own knowledge that the market value of said lots has substantially increased since the time of their sale respectively, and that in the statement hereto attached is give- the correct amount of the price paid for each lot and the present market value thereof exclusive of improvements, to the best of your affiant's knowledge and belief. That the statement hereto attached and hereinbefore referred to is a true and correct statement of the facts therein stated.

Deponent further says, that The Ontario Land Company did not, as was claimed in Appellant's Brief, and as said court inadvertently assumed, omit to pay the taxes on the land involved herein, for the purpose of avoiding the payment of said taxes, but for the following reason, viz.; Deponent states that in years gone by, it was the practice in the County of Yakima to issue receipts for the payment of
127 taxes on real estate, without describing the real estate, and that for years in the payment of such taxes deponent used his best efforts to induce the County officials to describe the land upon which the taxes were paid.

That by reason of such custom, deponent in one case paid three times, the taxes for one year on one piece of property, because of his inability to satisfy the County officials subsequent to those issuing the tax receipt, that he had in fact paid the same. By reason of this experience deponent insisted that his tax receipts should describe his land; and deponent further says that as an officer of The Ontario Land Company, he instructed the Agent of The Ontario Land Company at North Yakima, to request the County Officials to assess the land in question, as that part of land in Capital Addition marked "Reserved," and deponent is informed by said agent that such request was duly made, but because it was not so described on the tax lists, and under advice of counsel, deponent says The Ontario Land Company declined to pay said taxes, being advised by Counsel that the description on the tax list did not describe the property in question, and such receipts would not be evidence of the payment of taxes on the land in question, without proof *aliunde* that the parcels of land were identical.

Deponent further says that he did not inform his counsel in this case of these facts, because being ignorant of the law in this jurisdiction, he did not suppose that the intention of The Ontario Land

Company in the non-payment of its taxes could in any wise affect the validity of the tax judgment.

Further affiant saith not, save that he makes this affidavit at the request of his Counsel, in support of the petition for re-argument of said case.

CHESTER A. CONGDON.

Subscribed and sworn to before me this 17th day of November, A. D. 1906.

LEE W. FARMER, [NOTARIAL SEAL.]
Notary Public, in and for St. Louis County, Minnesota, Residing at Duluth, Minnesota.

My Commission expires Jan. 15th, 1910.

128 *Lots under Contract.*

Description. Lot.	Block.	Name and place of residence of purchaser.	Date of sale.	Price paid.	Present market value.
3 & 4	1	W. H. Carver, North Yakima.	Jan. 24, 1905	$300.00 each.	$700.00 each
5	1	Nicholas E. Mechtel, North Yakima	Jan. 31, 1905	$300.00	700.00
6	1	John A. Lindstrom, North Yakima.	Jan. 31, 1905	$300.00	700.00
7 & 8	1	T. Bakker, North Yakima.	Jan. 28, 1905	$350.00 each	850.00 each
15 & 16	1	John D. Medill, North Yakima.	Feb. 3, 1905	$350.00 each	850.00 each
3 & 4	2	Nathan P. Hull, North Yakima.	Feb. 2, 1905	$300.00 each	700.00 each
6	2	Robert A. Wise, North Yakima.	Feb. 3, 1906	$300.00	700.00
9 & 10	2	George M. Doll, North Yakima.	Nov. 1, 1905	$400.00 each	850.00 each
13 & 14	2	Frank Sharkey, North Yakima.	Oct. 28, 1905	$350.00 each	700.00 each
15 & 16	2	Wm. F. Iler and Jas. A. Loudon North Yakima.	Jan 17, 1906	$500 00 each	850.00 each
9 & 10	3	John J. Miller & Orin A. Clark North Yakima.	Jan. 12, 1906	$400.00 each	750.00 each
11	3	Robert G. Hines North Yakima.	Jan. 2, 1906	$350.00	600.00
12	3	Joseph E. Thompson North Yakima.	Nov. 16, 1905	$350.00	600.00
13	3	Elizabeth Osborne North Yakima.	Dec. 28, 1905	$350.00	600.00
14	3	John J. Miller North Yakima.	Dec. 30, 1905	$350 00	600.00
15 & 16	3	Ettie J. Bruff North Yakima.	Dec. 14, 1905	$400.00 each	750.00 each
1 & 2	4	Charles H. Hinman North Yakima	Feb. 3, 1905	$350.00 each	750.00 each
6	4	W. T. Stewart North Yakima	Feb. 9, 1905	$300.00	600.00
9 & 10	4	Halvor L. Walen North Yakima.	Nov. 13, 1905	$400.00 each	750.00 each

129 *Lots under Contract*—Continued.

Description. Lot.	Block.	Name and place of residence of purchaser.	Date of sale.	Price paid.	Present market value.
11	4	Stephen Gardiner North Yakima.	Nov. 10, 1905	$350.00	600.00
12	4	Lou Sivels North Yakima.	Nov. 9, 1905	$300.00	600.00
13	4	Lee Dearing North Yakima.	Dec. 26, 1905	$350.00	600.00
14	4	Fred H. Hale North Yakima.	Nov. 11, 1905	$350.00	600.00
15 & 16	4	Albert Mallon North Yakima	Nov. 6, 1905	$400.00 each	750.00 each
1 & 2	1	F. X. Nagler North Yakima.	Dec. 4, 1904	$350.00 each	850.00 each
5	2	Charles Gerber North Yakima.	Feb. 3, 1905	$300.00	700.00
4	3	Katherine Lynch North Yakima.	Feb. 10, 1905	$300.00	600.00
4	4	Joseph E. Thompson North Yakima.	July 3, 1906	$300.00	600.00

130 *Lots Deeded.*

Description. Lot.	Block.	Name and place of residence of purchaser.	Date of sale.	Price paid.	Present market value.
9, 10, 11	1	S. J. Lowe, North Yakima.	Nov. 1, 1905	$1150.00	$2400 for 3
12	1	Adam Alexander North Yakima.	Oct. 26, 1905	$350.00	700.00
13 & 14	1	John C. Forney, John W. Forney and Roy Forney, North Yakima.	Oct. 28, 1905	$350.00 each	700.00 each
11 & 12	2	Florence B. Royce North Yakima.	Dec. 19, 1905	$350.00 each	700.00 each
3	3	Elizabeth Osborne North Yakima.	Feb. 10, 1905	$300.00	600.00
5 & 6	3	Fred L. Miller North Yakima.	Nov. 1, 1905	$350.00 each	600.00 each
7 & 8	3	John A. De Young North Yakima.	Nov. 3, 1905	$400.00 each	750.00 each
3	4	Joseph E. Thompson North Yakima.	Nov. 3, 1905	$300.00	600.00
5	4	Josiah S. Berk North Yakima.	Nov. 6, 1906	$300.00	600.00
7 & 8	4	Alfred L. Johnson, North Yakima.	Feb. 14, 1905	$350.00 each	750.00 each

Endorsed: 6233 Original. State of Washington Supreme Court. The Ontario Land Co. Respondent, *vs.* Jay Yordy, *et al.*, appellants. Petition of the Ontario Land Co. for Re-Argument. Filed Nov. 24, 1906. C. S. Reinhart, Clerk.

131 STATE OF WASHINGTON:

In the Supreme Court.

THE ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY ET AL., Appellants.

Petition for Reargument.

To the Honorable Judge of the Supreme Court of the State of Washington:

The undersigned respectfully petition this honorable court for a re-hearing and re-argument of the above entitled action, and that they be permitted to be represented by counsel on such re-argument.

Each of your petitioners is the owner of the lots in Heerman's Addition to North Yakima, according to the recorded plat thereof, which are described after the respective signatures hereto, which lots they own either by contract or by conveyance from the Ontario Land Company, one of the parties to this action.

They further represent that all the lots in said Heerman's addition are affected by the identical tax judgment which this Court has held, in the opinion filed by this court in the above entitled action on the 27th day of October, 1906, divested The Ontario Land Company of its title to the land therein involved.

That prior to the filing of said decision, your petitioners represent on information and belief, that The Ontario Land Company had sold all of the lots in said Addition, and that said lots so sold were purchased by sundry parties in reliance upon advice of counsel learned in the law, that said tax judgment was void.

That all or nearly all of said lots were sold as aforesaid by The Ontario Land Company since the commencement of this
132 action, and your petitioners are advised by counsel that the decision of this court will deprive them of said lots and all their improvements and betterments thereon, without any redress save as against The Ontario Land Company, for the purchase price of said lots, with interest thereon at the rate of six per cent. per annum.

Your petitioners further represent to this court, that since the sale of said lots by The Ontario Land Company as aforesaid, their market value has increased three or four fold, and that said lots are now worth from $800 to $1200 apiece, and that many of said contracts given by The Ontario Land Company as aforesaid, have been transferred to sundry purchasers at a large advance over the contract price, without any warranty of title by the assignor of said contracts, so that the purchasers of said contracts have no recourse against any one for reimbursement of the moneys so paid by them in excess of the contract price for such lots.

Many of your petitioners have conferred with said Yordy concerning a settlement with him, and have thus far been unable to reach any adjustment, but he claims that he shall insist upon the

market price of such lots in settling with them, which your petitioners believe to be true, because the said Yordy is a non-resident of North Yakima, and has no interest whatever in its welfare.

By reason of the facts aforesaid, the financial loss to the purchasers of said lots from The Ontario Land Company will be three or four times as great as will be the loss sustained by The Ontario Land Company.

That by reason of said decision of this court, the holders of said tax titles will oppress your petitioners and the other owners of said lots by litigation and demand for extortionate prices for a settlement of their said title, which will result in much litigation and great loss, injury and expense to your petitioners.

That therefore your petitioners are much more interested in the result of said case than is The Ontario Land Company.

133 That your petitioners are advised by counsel learned in the law, that it can be shown on a new trial of the above entitled case, that said tax judgment and tax sale are void, and for that reason your petitioners pray that W. H. Bogle, Esq., as their counsel, and as *Amicus curiæ*, may file a brief on re-argument, and that the Court may by its order allow the filing of such brief by him, or allow him to make an oral argument upon such re-argument.

Names.	Residence.	Lot.	Block.
Yakima Hardware Co..... W. A. Bell, Secy.	City.....	6	4
Frank H. Sharkey.....	"	13 & 14	2
John D. Medill.....	"	13 & 16	1
Logan H. Roberts.....	"	12	4
S. J. Lowe.....	.....	Lots 9–10–11 Block one " 1 & 2 " 3 " 7 & 8 " 2	
H. M. Helliesen.....	.....		
H. L. Walen.....	.....	9 & 10	4
E. W. Shaw.....	.....	14	3
Miles Connor.....	.....	Lot- 9 & 10	3
C. H. Hinman.....	.....	Lots 1 & 2 "	4
J. V. Mohr.....	.....	Lots 1 & 2 Block	1
A. L. Johnson.....	.....	Lots 7 & 8 "	4
John A. DeYoung.....	.....	Lots 7 & 8 "	3
Chas. W. Camp.....	.....	Lots 7 & 8 "	1
Chas. Gerber..... by Josephine Gerber Attorney in fact.	.....	Lot 5 block	2
134 Katheryn Devine....	City.....	4	3
N. P. Hull.....	.....	3 & 4	2
G. M. Doll.....	City.....	9 & 10	2
David Royce.....	.....	11 & 12	2
F. L. Miller.....	.....	5 & 6	3
J. C. Forney..... J. W. Forney..... Roy Forney.....		Lots 13 & 14 Bl. 1	

Endorsed: 6233. The Ontario Land Company, Respondent, *vs.* Jay Yordy, *et al.* Appellants. Petition for Re-Argument. by Lot owners not parties Filed Nov. 24, 1906, C. S. Reinhart, Clerk.

135 STATE OF WASHINGTON:

In the Supreme Court.

THE ONTARIO LAND COMPANY, Respondent,
against
JAY YORDY ET AL., Appellants.

Certificate of Federal Question.

On motion of the above named Ontario Land Company, in the above entitled appeal, this Supreme Court of the State of Washington, hereby orders it to be certified and made part of the record in this case, and the Hon. Hiram E. Hadley Chief Justice of said Supreme Court, does now certify, that in said cause and on the hearing before this court, it was claimed, contended and alleged by the said Ontario Land Company, that to give the force and effect to the tax judgment and tax deed involved in said cause and referred to in the record and opinion of this Court, of divesting the title of said Ontario Land Company to the lands in its complaint described, is to divest said Ontario Land Company of its said property "without due process of law" in contravention of the Fourteenth Amendment to the Constitution of the United States, which provides that "no state shall deprive any person of his property without due process of law."

That the reasons assigned by said Ontario Land Company for its said contentions were, that to constitute proper notice under said 14th amendment, in a tax proceeding *in rem*, the description of the property sought to be taken and sold for the tax, must be so full as to be intelligible to persons of ordinary intelligence, and that the description of lands in question in the tax summons notice,
136 judgment and tax deed involved herein, was wholly insufficient for the purpose of notice under said 14th amendment; and that because of such contention and claim, it became and was material to the said cause for this Court to determine whether the said tax summons notice, tax judgment and tax deed, involved in said cause, were repugnant to the aforesaid provision of the 14th Amendment of the Constitution of the United States, by reason of the alleged insufficiency of description of the property, and whether the tax judgment and tax deed therein involved deprived said Ontario Land Company of its property "without due process of law," in violation of said 14th amendment, by reason of the alleged insufficiency of description aforesaid; and the decision of this Court was in favor of the validity of said tax judgment and tax deed and was adverse to the aforesaid claims of said Ontario Land Company, and this Court decided, that said tax summons notice, tax judgment and tax deed, were not repugnant to said 14th amendment by reason

of said alleged defects in the description of said property, and that therefore they did not deprive said company of its property "without due process of law" in violation of said 14th amendment. That it was further claimed, contended and alleged by the said Ontario Land Company in said cause in this Court, that the judgment of the Superior Court for the County of Yakima in said tax proceedings, and the sale of said land thereunder, were void and did not constitute "due process of law," for the reason that no notice was given to said Ontario Land Company of the pendency of said action, and said judgment was rendered without a hearing or an opportunity to be heard; that the publication of notice of said action was made in November and December, 1901; that at the time such publication was made and at the time the owner of said land was notified to appear and defend said action, there was no action pending in said court; that the complaint (called in the proceedings the Application for Judgment) was not filed in court and no
137 action was commenced therein, until September 2, 1902, on which day the complaint was filed, and judgment rendered against said property. That because of such claim and contention it became and was material to the said cause for this Court to determine, whether said judgment in said tax proceeding and the sale made pursuant thereto, were repugnant to the aforesaid provision of the 14th Amendment of the Constitution of the United States, by reason of the alleged lack or insufficiency of the notice to the property owner of the proceedings in said court against his property, and whether said judgment and sale in the tax proceedings therein involved deprived said Ontario Land Company of its property without due process of law, by reason of such alleged insufficiency of the notice of the pendency of such proceedings; and the decision of this court was in favor of the validity of said judgment and sale and was adverse to the aforesaid claims and contentions of said Ontario Land Company, and that said tax proceedings and the judgment therein rendered and the sale had and made thereunder constituted due process of law and were not repugnant to said 14th amendment, and that therefore they did not deprive said company of its property "without due process of law" in violation of said amendment.

In witness whereof, the Supreme Court aforesaid has caused this certificate to be duly sealed with its seal, and the said Chief Justice has hereunto set his hand this 30th day of January A. D. 1907.

HIRAM E. HADLEY,
Chief Justice of Supreme Court, State of Washington.

Endorsed: 6233. Original. The Ontario Land Company, Respondent, *vs.* Jay Yordy, *et al.*, Appellants. Certificate of Federal Question. Filed Jan. 31, 1907. C. S. Reinhart, Clerk.

138 In the Superior Court of the State of Washington for Yakima County.

ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, Defendants.

Demurrer to Defendants' Amended Answer.

Paragraph 1. Comes now the above named plaintiff, and demurs to the new matter in defendants' amended answer herein contained, purporting to be a first and affirmative defense to the first and second causes of action in the complaint, for the reason that it appears from the face of said new matter that the same does not state facts constituting any defense or counterclaim to said first and second causes of action or either thereof or bar whatsoever to the relief prayed in plaintiff's complaint, or any part thereof.

Paragraph 2. And the plaintiff demurs to the alleged further and second defense in said amended answer, and to the new matter therein contained for the reason that it appears upon the face thereof, that said new matter does not constitute any defense to the first and second causes of action in the complaint herein, or to either of said causes of action, or any counterclaim thereto or any bar whatsoever to the relief prayed in plaintiff's complaint or any part thereof.

Paragraph 3. And the said plaintiff demurs to the third
139 affirmative defense in said answer, for the reason that it appears upon the face thereof that the same does not state facts constituting any defense to the plaintiff's causes of action, or either thereof, or any bar whatsoever to the relief prayed in plaintiff's complaint, or any part thereof.

FRED PARKER &
SNYDER & PREBLE,
Attorneys for Plaintiff.

Endorsed: Filed for record Apr. 18th, 1905. J. W. Day, County Clerk, by Edw'd E. Cleaver, Deputy.

140 In the Superior Court of the State of Washington for Yakima County.

ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, Defendants.

Order.

The above entitled matter coming on for hearing on the — day of April, 1905, upon the demurrers of the said plaintiff to the three several affirmative defenses set forth in defendants' first amended answer herein respectively Fred Parker and Snyder and Preble

appearing for plaintiff and Ira P. Englehart appearing for defendants, and the court upon the date last aforesaid, having heard the argument of the said counsel, upon said demurrer, takes the same under advisement and now, being fully advised in the premises, it is here ordered that the said demurrer to the said first affirmative defense in the said amended answer be, and the same hereby is overruled.

And it is further ordered that the said demurrer to the said second affirmative defense set forth in said amended answer be, and the same hereby is sustained.

And it is further ordered that the said demurrer to the said third affirmative defense set forth in said amended answer be, and the same hereby is sustained. Plaintiff granted three days to further plead to said first affirmative defense.

Done in open Court this May first, 1905.

H. B. RIGG,
Superior Judge.

141 The said plaintiff excepts to the said order overruling its demurrer to said first affirmative defense set forth in said amended answer, and its exception is duly allowed.

The said defendants except to the said orders of the Court, sustaining said demurrers to said second and third affirmative defenses respectively, and their exception is duly allowed.

Done by the Court May the first, 1905.

H. B. RIGG,
Superior Judge.

Endorsed: Filed for record May 4th, 1905. J. W. Day, County Clerk, by Edw'd E. Cleaver, Deputy.

142 In the Superior Court of the State of Washington in and for Yakima County.

ONTARIO LAND COMPANY, a Corporation, Plaintiff,
vs.
J. E. YORDY and MINNIE E. YORDY, Defendants.

STATE OF WASHINGTON, *County of Yakima, ss:*

I, J. W. Day, County Clerk and *ex-officio* Clerk of the Superior Court of Yakima County, State of Washington, do hereby certify that the above and foregoing is a true and correct transcript of all the files and records in the above entitled case as I have been requested by the Respondent to transmit to the Supreme Court of the State of Washington, as the same now appear on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at North Yakima, this 6th day of June, A. D. 1906.

J. W. DAY,
County Clerk and Ex-officio Clerk of said Superior Court.

Endorsed: 6233. Filed Jun- 11, 1906, C. S. Reinhart, Clerk.

143 In the Supreme Court of the State of Washington.

ONTARIO LAND COMPANY, Respondent,
vs.
JAY YORDY and MINNIE E. YORDY, His Wife, Appellants.

Bond on Writ of Error.

Know all men by these presents that we, Ontario Land Company, above named, as principal, and Harry W. Smith, of Thurston County, in said State of Washington, as surety, are held and firmly bound unto said Jay Yordy and Minnie E. Yordy, his wife, in the sum of Twenty-five Hundred Dollars to be paid to the said obligees, their executors, administrators and assigns, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this thirteenth day of February, A. D. 1907.

Whereas, lately at a session of the Supreme Court of the State of Washington, in an action pending in said Court between the above named Ontario Land Company, respondent in said Court and action, and the above named Jay Yordy and Minnie E. Yordy, his wife, appellants in said Court and action, a final judgment was rendered against said Ontario Land Company, and in favor of said Jay Yordy and Minnie E. Yordy, and whereas, the above named Ontario Land Company has sued out a writ of error in the Supreme Court of the United States, to reverse the judgment aforesaid,

Now, therefore, the condition of this obligation is such, that if the above named Ontario Land Company, said plaintiff in error, shall prosecute its said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

ONTARIO LAND COMPANY,
By E. B. PREBLE,
Its Attorney-in-fact. [SEAL.]
HARRY W. SMITH. [SEAL.]

Signed and sealed in presence of
ALFRED THOMPSON.

144 STATE OF WASHINGTON, *Thurston County, ss:*

E. B. Preble coming before me personally and being first duly sworn says on oath that he is the attorney of record of Ontario Land Company named in the within bond in the within entitled action, and that he is and at the time of the execution of the said bond was also the attorney in fact of said Ontario Land Company; that he signed the name of the Ontario Land Company to said bond and at the time of making said signature he was duly authorized so to do by said Ontario Land Company, and said affiant further said on

oath and acknowledged to me that he executed the said bond in the name and behalf of said Ontario Land Company freely and voluntarily as and for the free act and deed of said Ontario Land Company and for the uses and purposes therein set forth.

E. B. PREBLE.

Subscribed and sworn to before me this 14th day of February, 1907.

[NOTARIAL SEAL.] P. M. TROY,
Notary Public, State of Washington,
Residing at Olympia, Washington.

145 STATE OF WASHINGTON, *County of Thurston, ss:*

On this 13th day of February, 1907, before me, the undersigned Notary Public, personally appeared Harry W. Smith, to me known to be the person described as surety in and who executed the foregoing bond, and he acknowledged to me that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year in this certificate first above written.

[NOTARIAL SEAL.] ALFRED THOMPSON,
Notary Public in and for State of Washington,
Residing at Olympia, Washington.

STATE OF WASHINGTON, *County of Thurston, ss:*

Harry W. Smith appearing before me personally, and being duly sworn, says: that he is the same person who executed the foregoing bond; that he is worth in property situate in the State of Washington, more than $10,000.00, over and above his debts and liabilities, and exclusive of his property exempt from execution. That he is not an attorney or counselor-at-law, not a sheriff, nor clerk, or other officer of any court.

HARRY W. SMITH.

Subscribed and sworn to before me this 13th day of February, A. D. 1907.

ALFRED THOMPSON, [NOTARIAL SEAL.]
Notary Public, in and for the State of Washington,
Residing at Olympia, Washington.

I hereby approve the foregoing bond and surety on this 14th day of February, A. D. 1907.

HIRAM E. HADLEY,
Chief Justice of the Supreme Court
of the State of Washington.

Endorsed: 6233. Ontario Land Company, Respondent, *vs.* Jay Yordy and Minnie E. Yordy, his wife, Appelants. Bond on Writ of Error. Filed Feb. 14, 1907. C. S. Reinhart, Clerk.

146 In the Supreme Court of the State of Washington.

No. —.

ONTARIO LAND COMPANY, Appellee,
v.
JAY YORDY ET AL., Appellants.

Notice.

To the Appellants, Jay Yordy and Wife, and to Ira P. Englehart, Esq., their Attorney of Record:

Take notice that the motion of the Appellee in the above entitled cause to modify the judgment heretofore entered by the Supreme Court therein will be called up for hearing before the Supreme Court of the State of Washington at Olympia, on January 18, 1907, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard. Said motion is based upon the records and files in said cause.

E. B. PREBLE,
A. L. AGATIN,
Attorneys for Appellee.

147 In the Supreme Court of the State of Washington.

No. —.

ONTARIO LAND COMPANY, Appellee,
v.
JAY YORDY ET AL., Appellants.

Motion.

Comes now the Ontario Land Company, appellee in the above entitled cause, by its attorneys, and moves the court to modify the judgment heretofore entered by this court in this cause in so far as said judgment directs the lower court to enter judgment quieting the title of the said appellants to the lands in controversy and described in the pleadings, and in lieu thereof to enter judgment directing the lower court either to dismiss said action or to take further proceedings not inconsistent with the opinion rendered by this court in said cause.

Said appellee assigns the following grounds for said motion:

1. The appellants in their pleadings in the court below did not pray for judgment quieting their title, but limited the relief sought by them to a prayer for a dismissal of the action.

2. This court having decided in this cause that the appellee could not in this action attack the regularity or validity of the tax proceedings upon which the title of the appellants is based (beyond the

question of the sufficiency of the description of the land
148 therein), for the reason that the appellee had not paid or tendered the taxes, which this court holds to be a condition precedent to a right of action to attack the regularity or validity of tax proceedings, it was improper to direct the lower court to enter judgment quieting the title of the appellants based upon said tax proceedings.

3. Because the judgment so entered by this court, in so far as it directs the quieting of the title of the appellants to the lands in controversy, is irregular in this, that it is contrary to the precedent established by this court in other similar cases.

E. B. PREBLE,
A. L. AGATIN,
Attorneys for Motion.

148½ The service of the enclosed Motion admitted and a true copy received this 11th day of January, 1907.

IRA P. ENGLEHART,
Attorneys for Jay Yordy et al., Appellants.

[Endorsed:] Original. Supreme Court of the State of Washington. Ontario Land Company, Appellee, *v.* Jay Yordy *et al.*, Appellants. Motion. Filed Jan. 14, 1907. C. S. Reinhart, Clerk. Bogle, Hardin & Spooner, 377 Colman Bldg., Seattle, Wash., E. B. Preble, North Yakima, Wash., Attorneys for Appellee.

149 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you, or some of you, being the highest court of the said State in which a decision could be had in said suit between the Ontario Land Company, plaintiff (respondent in said Supreme Court of Washington), and Jay Yordy and Minnie E. Yordy, his wife, defendants (appellants in said Supreme Court of Washington), wherein there was drawn in question the validity of an authority exercised under the laws of the State of Washington on the ground of its being repugnant to the Constitution of the United States, and the decision of the said Supreme Court of Washington was in favor of the validity of said authority, a manifest error hath happened to the great damage of said Ontario Land Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Wash-

ington on the 15th day of April A. D. 1907, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court the 18" day of February, in the year of our Lord nineteen hundred and seven.

[Seal of the United States Circuit Court, Western District of Washington.]

A. REEVES AYRES,
Clerk of U. S. Circuit Court for the Western District of Washington.

Allowed by
HIRAM E. HADLEY,
Chief Justice of the Supreme Court of Washington.

149½ [Endorsed:] 6233. In the Supreme Court, State of Washington. Ontario Land Company, Respondent, *vs.* Jay Yordy *et al.*, Defendant. Writ of Error. Filed Feb. 14, 1907. C. S. Reinhart, Clerk.

150 Supreme Court of the United States.

ONTARIO LAND COMPANY, Plaintiff in Error,
vs.
JAY YORDY and MINNIE E. YORDY, His Wife, Defendants in Error.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jay Yordy and Minnie E. Yordy, his wife, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, on the 15th day of April 1907 next, pursuant to a writ of Error filed in the Clerk's office of the Supreme Court of the State of Washington, wherein Ontario Land Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 14th day of February, in the year of our Lord Nineteen hundred and seven.

HIRAM E. HADLEY,
Chief Justice of the Supreme Court of the State of Washington.

I, the undersigned Ira P. Englehart attorney of record for the above named Jay Yordy and Minnie E. Yordy in the Supreme Court of the State of Washington, and in the Superior Court of said State in the action wherein was rendered the Judgment referred to in the foregoing Citation, do hereby accept service in behalf of said Jay Yordy and Minnie E. Yordy of the said Citation on this 18th day of February, 1907, and do hereby acknowledge receipt of a true copy of said Citation on the date aforesaid at North Yakima, Washington.

Witness my hand this 18th day of February, 1907.

IRA P. ENGLEHART,
Attorney for said Jay Yordy and Minnie E. Yordy in the Supreme Court of the State of Washington.

150½ [Endorsed:] 6233. In the Supreme Court of the United States. Ontario Land Company, Plaintiff in Error, *vs.* Jay Yordy *et al.*, Defendants in Error. Citation to Defendants. Filed Feb. 19, 1907. C. S. Reinhart, Clerk.

151 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON,
Office of Clerk of the Supreme Court, ss:

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, do hereby certify and return, that the foregoing and annexed transcript of record is a full and complete transcript of the return of the Clerk of the Superior Court on appeal to the Washington State Supreme Court, judgment, judgment roll, minutes of the Court docket, petition for re-hearing, order denying the same, motion to modify judgment of reversal, opinion of the Washington State Supreme Court and certificate of Federal question, had in the case of the Ontario Land Company, respondent and plaintiff against Jay Yordy and Minnie E. Yordy, his wife, appellants and defendants, as appears from the original files and records of the supreme court of the State of Washington. And I do further certify and return that I have annexed to said transcript and included therewith, a true and correct copy of the Petition for Writ of Error, Order allowing same, Bond on the Writ of Error, the Assignments of Error in the United States Supreme Court, as the same remain on file and of record in the said Supreme Court of the State of Washington, and the original Writ of Error from the Supreme Court of the United States, and the original Citation issued thereon, with admission of service thereon.

And I further certify that on the 14th day of February, A. D. 1907, a copy of said Writ of Error for said Jay Yordy and Minnie E. Yordy was duly lodged and filed in the Clerk's office of said Supreme Court of the State of Washington.

And I further certify and return, that the foregoing constitute a true and complete return and transcript of the record in said cause in said Court, and a complete, true and correct copy of all proceedings in the above and therein entitled cause, as the same remains

of record and on file in the office of the Clerk of said Supreme Court of the State of Washington.

152 And I further certify that the motion to modify the judgment of this court was not filed until more than thirty days after the filing of the opinion in this case and not until after the petition for rehearing had been denied, and that the same was not considered by the court for the reason that it was nothing more than an additional petition for rehearing, and that if the matters contained therein were not covered by the original petitions for rehearing they should have been, and for the further reason that the same was not filed within the time limited by law.

In witness whereof, I have hereunto set my hand and the seal of the Supreme Court at Olympia, Wash., this 30th day of March, 1907.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: File No. 20,663. Washington supreme court. Term No. 277. Ontario Land Company, plaintiff in error, *vs.* Jay Yordy and Minnie E. Yordy, his wife. Filed April 11th, 1907. File No. 20,663.